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No. 454

In the

United States Court of Appeals

For the Seventh Circuit

Nos. 11887 - 11888

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* vs. JACK GREEN, *Defendant-Appellant.* — 11887	Appeals from the United States District Court for the Southern District of Illinois, Southern Division.
UNITED STATES OF AMERICA, *Plaintiff-Appellee,* vs. GENERAL LABORERS' LOCAL 397 OF GRANITE CITY, ILLINOIS, *Defendant-Appellant.* — 11888	Honorable J. Leroy Adair, Trial Judge.

APPENDIX TO APPELLANT'S BRIEF.

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Ridgely Building,
Springfield, Illinois,

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1 Pleas in the District Court of the United States of America within and for the Southern Division of the Southern District of Illinois, held in the City of Springfield, in said Division and District, before the Honorable Charles G. Briggle and the Honorable J. Leroy Adair, Judges of said Court, on Monday the first day of June, in the year of our Lord one thousand nine hundred and fifty-three, and of the Independence of the United States of America, the one hundred and seventy-seventh year.

Present:

Charles G. Briggle, District Judge.
J. Leroy Adair, District Judge.
William J. Littell, United States Marshal.
John B. Stoddart, Jr., United States Attorney.
G. W. Schwaner, Clerk.

Attest:

G. W. Schwaner, Clerk.

2 IN THE UNITED STATES DISTRICT COURT.

Southern District of Illinois

Southern Division

United States of America,
Plaintiff-Appellee,

vs.

Jack Green and General Laborers' Local No. 397 of Granite City, Illinois, A Labor Union and Voluntary Association of Workingmen Affiliated With International Hod Carriers Building and Common Laborers Union of America,
Defendants-Appellants.

PREFIX TO RECORD.

Counsel for Appellant:

Mr. Arthur M. FitzGerald,
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Counsel for Appellee:

Mr. John B. Stoddart, Jr.
United States Attorney,
Federal Building,
Springfield, Illinois,

Mr. Marks Alexander,
Assistant United States Attorney,
Federal Building,
Springfield, Illinois,

Mr. Robert B. Oxtoby,
Assistant United States Attorney,
Federal Building,
Springfield, Illinois.

3 On December 17, 1953, appellees were indicted by the Grand Jury in the District Court of the United States, for the Southern District of Illinois, Southern Division. The original parties are those stated in the caption and none have been either added or dismissed.

On December 28, 1953, defendants were arraigned in open court with counsel present. A plea of not guilty for each was entered with leave to withdraw the same and file motions attacking the indictment in thirty days.

On January 27, 1954, pleas of not guilty were withdrawn and motions on behalf of each defendant were filed to strike and to dismiss the indictments and all counts thereof; on February 23, 1954, supplemental motions were filed for both defendants; and on March 18, 1954, by leave of court, additional supplemental motions were filed, whereupon the cause was heard and taken under advisement.

On March 19, 1954, a motion to strike the additional supplemental motion with proof of mailing notice was filed by plaintiff.

On April 16, 1954, the plaintiff's motion to strike defendants' additional supplemental motion was withdrawn, and the defendants' motion to dismiss, motions to strike, supplemental motions and additional supplemental motions were denied.

On May 14, 1954, defendants, present in open court in person and by attorney, were duly arraigned and each entered

a plea of not guilty, whereupon the case was set for trial to commence at 10:00 A.M., C.D.T. on September 14, 1954.

On September 14, 1954, the cause was called for trial and all parties being in court and ready, the jury was selected and sworn, together with an alternate juror. The trial was concluded on September 24, 1954. During the course of the trial, motions were filed and ruled upon, as follows: On September 20, 1954, the Government, having rested, the
4 defendants filed a motion for a directed verdict of not guilty as to each, both of which were denied by the Court. On September 24, 1954, defendants having rested, plaintiff having produced its rebuttal evidence, and both sides having rested, defendants filed motions for a directed verdict of not guilty for each, which were taken under advisement by the Court. Whereupon, the Government filed a motion of election to proceed on Counts 1, 2, 4 and 9 only, which motion was allowed. The jury after due proceedings, then retired and later returned into open court with its verdict, finding each defendant guilty on Counts 1 and 2, and not guilty on Counts 4 and 9.

On October 10, 1954, pursuant to leave previously obtained, each defendant filed its motion for judgment of acquittal and, in the alternative, for a new trial, and in arrest of judgment.

On November 1, 1954, said motions were heard and taken under advisement and each defendant renewed its motion made at the close of the Government's evidence, and at the close of all the evidence, to direct a verdict of not guilty. These motions were also taken under advisement.

On January 24, 1955, the Court entered an order, filing a memorandum of opinion, overruling all motions except that in arrest of judgment. As to each defendant the motion in arrest of judgment was therein allowed.

The trial judge in these proceedings was the Honorable LeRoy Adair.

On February 21, 1955, notices of appeal by the United States, with proof of service was filed. Said appeal was duly prosecuted and on March 26, 1956, the Supreme Court of the United States, in a divided opinion entered judgment reversing the order in arrest of judgment and remanded the cause to the District Court for further proceedings, in accordance therewith.

While the appeal was pending, the trial judge died, and upon the remandment the Honorable Casper Platt, District Judge, was duly assigned to the case.

On April 30, 1956, the mandate of the Supreme Court
5 was filed in the District Court; on July 2, 1956, on motions of the Government for re-docketing and judgment on the verdict, the cause was redocketed, arguments heard and the cause taken under advisement, briefs to be filed.

On August 24, 1956, motion for new trial as to each defendant was denied and judgment entered as follows: As to defendant Green, a fine of $3,000 and, on the Court's own "motion", probation for three years conditioned that he pay the fine and hold no office in any union during the period; as to defendant Union, a fine of $3,000. At the same time, a 30 day stay of execution was ordered as to each.

Notice of Appeal by each defendant was filed on August 28, 1956.

On August 29, 1956, each defendant filed a motion for leave to pay the amount of his fine into the registry of the Court to be held pending further order of the Court on disposition of the appeal, an order was entered authorizing such payment and the defendants accordingly made the deposit. At the same time the Court entered another order staying execution and fixing the appeal bond at $1500.00. This bond was duly approved and filed on September 24, 1956.

As to bail, upon being notified of the return of the indictments, defendant Green surrendered himself and was

immediately admitted to bail upon bond of $2500, as previously set by the Court. Upon return of the mandate of the Supreme Court, on motion of the Government that this bond be increased to $20,000, the District Court, on July 2, 1956, entered an order increasing bail to $10,000. On the same day, defendant posted bond in this amount which was duly approved. On August 24, 1956, the District Court entered an order extending this bond and providing that it remain in full force and effect.

With the aforesaid Notice of Appeal to this Court, proof of service was duly filed. The record on appeal, including transcript of the testimony and a certified copy of relevant docket entries of the District Court is herewith transmitted.

6 IN THE UNITED STATES DISTRICT COURT.

Southern District of Illinois.

At the June Term thereof, A. D. 1953.

United States of America,
vs.
Jack Green and General Laborers' Local No. 397 of Granite City, Illinois, A Labor Union and Voluntary Association of Workingmen Affiliated with International Hod Carriers Building and Common Laborers Union of America.

Docket No. 5236.

VIO: Sec. 1951 Title 18 USC. Interference with Commerce by Threats and violence.

(Filed Dec. 17, 1953. G. W. Schwaner, Clerk.)

Southern District of Illinois, Southern Division. } ss.

The grand jury charges:

Count One.

That on or about, to wit, April 13, A. D. 1953, at and adjacent to Chain of Rocks Canal, in the County of Madison, in the State of Illinois, in the Southern Division of the Southern District of Illinois and within the jurisdiction of this court, being a projected channel and conduit for traffic in interstate commerce on the Mississippi River and its tributaries, Jack Green and General Laborers' Local No. 397 of Granite City, Illinois, a Labor Union and Voluntary Association of Workingmen Affiliated With International Hod Carriers Building and Common Laborers Union of America, hereinafter called the Defendants, did unlawfully and wilfully obstruct, delay and affect, and attempt to obstruct, delay and affect commerce as that
7 term is defined in and by Section 1951 of Title 18, United States Code, to wit, interstate commerce, and

the movement of articles and commodities in such commerce by extortion, as that term is defined in and by said Section of said United States Code, that is to say, by then and there attempting to obtain from another, to wit, one Arthur W. Terry, Jr., then doing business under the name, style and description of Terry Engineering Co., and then and there engaged in executing a contract with the United States of America for the maintenance of a levee bordering said canal and theretofore erected and constructed as a part thereof, certain property of the said Arthur W. Terry, Jr., to wit, his money, in the form of wages to be paid for imposed, unwanted, superfluous and fictitious services of laborers commonly known as swampers, in connection with the operation of machinery and equipment then being used and operated by said Arthur W. Terry, Jr. in the execution of his said contract for maintenance work on said levee, the attempted obtaining of said property from said Arthur W. Terry, Jr. as aforesaid being then intended to be accomplished and accomplished with the consent of said Arthur W plished and accomplished with the consent of Said Arthur W. Terry, Jr., induced and obtained by the wrongful use, to wit, the use for the purpose aforesaid, of actual and threatened force, violence and fear made to said Arthur W. Terry, Jr. and his employees and agents then and there being; in violation of Section 1951 of Title 18, United States Code.

Count Two.

That on or about, to wit, March 26, A.D. 1953, at and adjacent to Chain of Rocks Canal, in the County of Madison, in the State of Illinois, in the Southern Division of the Southern District of Illinois and within the jurisdiction of this court, being a projected channel and conduit for traffic in interstate commerce on the Mississippi River and its tributaries, Jack Green, and General Laborers' Local

8 No. 397 of Granite City, Illinois, a Labor Union and Voluntary Association of Workingmen Affiliated with International Hod Carriers Building and Common Laborers Union of America, hereinafter called the Defendants, did unlawfully and wilfully obstruct, delay and affect, and attempt to obstruct, delay and affect commerce as that term is defined in and by Section 1951 of Title 18, United States Code, to wit, interstate commerce, and the movement of articles and commodities in such commerce by extortion, as that term is defined in and by said Section of said United States Code, that is to say, by then and there attempting to obtain from another, to wit, one Ralph Wright, Jr., then doing business under the name, style and description of Midway Excavating Co., and then and there engaged in executing a contract with the United States of America for the maintenance of a levee bordering said canal and therefore erected and constructed as a part thereof, certain property of the said Ralph Wright, Jr., to wit, his money, in the form of wages to be paid for imposed, unwanted, superfluous and fictitious services of laborers commonly known as swampers, in connection with the operation of machinery and equipment then being used and operated by said Ralph Wright, Jr. in the execution of his said contract for maintenance work on said levee, the attempted obtaining of said property from said Ralph Wright, Jr. as aforesaid being then intended to be accomplished and accomplished with the consent of said Ralph Wright, Jr., induced and obtained by the wrongful use, to wit, the use for the purposes aforesaid, of actual and threatened force, violence and fear made to said Ralph Wright, Jr., and his employees and agents then and there being; in violation of Section 1951 of Title 18, United States Code.

9. Count Three.

That Jack Green and General Laborers' Local No. 397 of Granite City, Illinois, a Labor Union and Voluntary Association of Workingmen Affiliated with International Hod Carriers Building and Common Laborers Union of America, hereinafter called the Defendants, on or about, to wit, April 13, A.D. 1953, at, to wit, Chain of Rocks Canal, in the County of Madison, in the State of Illinois, in the Southern Division of the Southern District of Illinois and within the jurisdiction of this court, did unlawfully and wilfully, in furtherance of a plan and purpose to commit the offense hereinbefore charged in Count One of this Indictment, the allegations with respect to which said offense are herein by this reference to said Count One incorporated in this Count Three of this Indictment with the same force and effect as though the tenor of the same were here repeated, did commit and threaten physicial violence to the person and property of the said Arthur W. Terry, Jr., then and there being, all with the intent and purpose of obstructing, delaying and effecting commerce, to wit, interstate commerce, and the movement of articles and commodities in such commerce as aforesaid; all in violation of Section 1951 of Title 18, United States Code.

Count Four.

That Jack Green and General Laborers' Local No. 397 of Granite City, Illinois, a Labor Union and Voluntary Association of Workingmen Affiliated with International Hod Carriers Building and Common Laborers Union of America, hereinafter called the Defendants, on or about, to wit, March 26, A.D. 1953, at, to wit, Chain of Rocks Canal, in the County of Madison, in the State of Illinois, in the Southern Division of the Southern District of Illinois and within the Jurisdiction of this court, did unlawfully and wilfully, in

furtherance of a plan and purpose to commit the offense
10 hereinbefore charged in Count Two of this Indictment, the allegations with respect to which said offense are herein by this reference to said Count Two incorporated in this Count Four of this Indictment with the same force and effect as though the tenor of the same were here repeated, did commit and threaten physical violence to the person and property of one Frank P. Luhning, then and there an employee of the said Ralph Wright, Jr., and to the property of said Ralph Wright, Jr., then and there being; all with the intent and purpose of obstructing, delaying and affecting commerce, to wit, interstate commerce, and the movement of articles and commodities in such commerce as aforesaid; all in violation of Section 1951 of Title 18, United States Code.

Count Five.

That Jack Green and General Laborers' Local No. 397 of Granite City, Illinois, a Labor Union and Voluntary Association of Workingmen Affiliated with International Hod Carriers Building and Common Laborers Union of America, hereinafter called the Defendants, on or about, to wit, April 13, A.D. 1953, at, to wit, Chain of Rocks Canal, in the County of Madison, in the State of Illinois, in the Southern Division of the Southern District of Illinois and within the jurisdiction of this court, did unlawfully and wilfully commit and threaten physical violence to the person and property of one Arthur W. Terry, Jr., in furtherance of a plan and purpose of said Defendants to obstruct and affect commerce, to wit, interstate commerce, and the movement of articles and commodities in such commerce and to attempt so to do, by extortion, that is to say, by attempting to obtain from said Arthur W. Terry, Jr., his property, to wit, his money, with his consent, by the wrongful use, in manner and form aforesaid, by

said Defendants, of actual and threatened force, violence and fear, to the person of said Arthur W. Terry, Jr.; in violation of Section 1951, Title 18, United States Code.

11 Count Six.

That Jack Green and General Laborers' Local No. 397 of Granite City, Illinois, a Labor Union and Voluntary Association of Workingmen Affiliated with International Hod Carriers Building and Common Laborers Union of America, hereinafter called the Defendants, on or about, to wit, March 26, A.D. 1953, at, to wit, Chain of Rocks Canal, in the County of Madison, in the State of Illinois, in the Southern Division of the Southern District of Illinois and within the jurisdiction of this court, did unlawfully threaten physical violence to the person of one Frank P. Luhning, then and there an employee of another, to wit, Ralph Wright, Jr., in furtherance of a plan to obstruct and effect commerce, to wit, interstate commerce, and the movement of articles and commodities in such commerce, and to attempt so to do by extortion, that is to say, by attempting to obtain the property, to wit, the money of said Ralph Wright, Jr., with his consent, by the wrongful use, that is to say, the use in manner and form aforesaid by said Defendants, of threatened force, violence and fear, to the person of said Frank P. Luhning; in violation of Section 1951 of Title 18, United States Code.

Count Seven.

That on or about, to wit, April 13, A.D. 1953, at, to wit, Chain of Rocks Canal, in the County of Madison, in the State of Illinois, in the Southern Division of the Southern District of Illinois and within the jurisdiction of this court, Jack Green and General Laborers' Local No. 397 of Granite, City, Illinois, a Labor Union and Voluntary Association

of Workingmen Affiliated with International Hod Carriers Building and Common Laborers Union of America, hereinafter called the Defendants, did then and there unlawfully commit and threaten physical violence to the person of one Arthur W. Terry, Jr., and commit and threaten to commit acts of physical violence to the property of said Arthur W. Terry, Jr., then and there being, all
12 in furtherance of a plan and purpose of said Defendants to obstruct, delay and affect commerce as that term is defined in Section 1951 of Title 18, United States Code, to wit, interstate commerce, and the movement of divers articles and commodities in such commerce by extortion; all in violation of Section 1951, Title 18, United States Code.

Count Eight.

That on or about, to wit, March 26, A.D. 1953, at, to wit, Chain of Rocks Canal, in the County of Madison, in the State of Illinois, in the Southern Division of the Southern District of Illinois and within the jurisdiction of this court, Jack Green and General Laborers' Local No. 397 of Granite City, Illinois, a Labor Union and Voluntary Association of Workingmen Affiliated with International Hod Carriers Building and Common Laborers Union of America, hereinafter called the Defendants, did then and there unlawfully threaten physical violence to the person of one Frank P. Luhning, and did threaten physical violence to the property of one Ralph Wright, Jr., then and there being, all in furtherance of a plan and purpose of said Defendants to obstruct, delay and affect commerce, as that term is defined in Section 1951 of Title 18 of the United States Code, to wit, interstate commerce, and the movement of divers articles and commodities in such commerce by extortion, that is to say, by means of obtaining the property, to wit, the meney of said Ralph Wright, Jr., with his consent, induced

and brought about by the wrongful use, to wit, the use in violation of Section 1951 of Title 18, United States Code, of threats of force, violence and fear, so made as aforesaid by said Defendants to said Frank P. Luhning; all in violation of Section 1951 of Title 18, United States Code.

13 Count Nine.

That Jack Green and General Laborers' Local No. 397 of Granite City, Illinois, a Labor Union and Voluntary Association of Workingmen Affiliated with International Hod Carriers Building and Common Laborers Union of America, hereinafter called the Defendant, on or about, to wit, the first day of January, A.D. 1953, and for a long period of time prior thereto, and continuously thereafter from that date up to and including the date of the return of this indictment, at, to wit, the County of Madison, in the State of Illinois, in the Southern Division of the Southern District of Illinois and within the jurisdiction of this court, did unlawfully, wilfully and knowingly conspire, that is to say, did combine, confederate, arrange and agree together, and with each other, and with divers other persons whose names are to the grand jurors unknown, to commit, in said Southern Division of the Southern District aforesaid, divers offenses in violation of the provisions of Section 1951 of Title 18, United States Code, by obstructing, delaying and affecting commerce, to wit, interstate commerce, and the movement of articles and commodities in such commerce, by extortion, and to attempt so to do and to commit and treaten physical violence to divers persons and the property of such persons, in furtherance of a plan and purpose to commit offenses in violation of said Section 1951, to wit, the several offenses hereinbefore in this Indictment charged in Counts One to Eight, both inclusive, the allegations of which said Counts are here incorporated in this, the Ninth Count of this Indictment, by this reference thereto, with the same

orce and effect as though said allegations were here set orth in full, and divers other like offenses against said Section; all in violation of Section 1951 of Title 18, United States Code.

A True Bill.

Doric C. Porter,
Foreman.

John B. Stoddart, Jr.,
United States Attorney.

14 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—5236) * *

ENTRY OF APPEARANCE.

(Filed Jan. 27, 1954. G. W. Schwaner, Clerk.)

Now comes, A. M. Fitzgerald, a practicing attorney, of Springfield, Illinois, and enters his appearance as one of the counsel for the defendants, Jack Green and General Laborers' Local No. 397 of Granite City, Illinois.

A. M. FitzGerald,
Attorney for Defendants.

15 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—5236) * *

WITHDRAWAL OF PLEA OF NOT GUILTY.

(Filed Jan. 27, 1954. G. W. Schwaner, Clerk.)

Now come the defendants, Jack Green and General Laborers' Local No. 397 of Granite City, Illinois, who heretofore on December 28, 1953, were granted permission to withdraw their pleas of not guilty and file a Motion to Dismiss the indictment, and each count thereof, hereby do

withdraw their pleas of not guilty and file herewith Motions to Dismiss the Indictment, and each count thereof.

Jack Green,
General Laborers' Local No. 397
of Granite City, Illinois,
By Jack Green,
Defendants.

16 IN THE UNITED STATES DISTRICT COURT.
(Caption—5236)

MOTION TO STRIKE.

(Filed Jan. 27, 1954. G. W. Schwaner, Clerk.)

Now come the defendants, Jack Green and General Laborers' Local No. 397 of Granite City, Illinois, by A. M. FitzGerald and Schaefer O'Neill, their attorneys, and move the Court to strike from each Count of the indictment:

(1) All references to Section 1951, Title 18, USC, for the reason that each Count of the indictment does not charge an offense under that Section, but purportedly charge offenses under Section 186, Title 29, USC.

(2) All references to the phrase "as that term is defined in and by said Section of said United States Code" for the reason that an indictment cannot plead essential elements of an offense by general reference to a statute.

(3) All references to the word "wrongful" in the indictment, for the reason that the indictment and each count thereof fails to show in what respect any act, acts or conduct were wrongful, and the use of the word wrongful alone is vague, ambiguous and uncertain.

Schaefer O'Neill,
A. M. FitzGerald,
Attorneys for Defendants

17 IN THE UNITED STATES DISTRICT COURT.

(Caption—5236)

MOTION TO DISMISS INDICTMENT AND ALL COUNTS THEREOF.

(Filed Jan. 27, 1954. G. W. Schwaner, Clerk.)

Now come the defendants Jack Green and General Laborers' Local No. 397 of Granite City, Illinois, by A. M. FitzGerald and Schaefer O'Neill, their attorneys, and move this Court to dismiss the indictment and all counts thereof in the above entitled cause on the following grounds:

I.

The Indictment Fails to State Facts Sufficient to Constitute an Offense Against the United States.

(1) It appears upon the face of the indictment and of each count thereof that no offense or crime against the United States was committed by these defendants.

18 (2) The indictment does not state facts sufficient to constitute an offense against the United States for the reason that it does not charge all of the essential elements of such an offense under Sections 1951, Title 18, U. S. C.

(3) The indictment and each count thereof fails to furnish the defendants with such a description of the charge against them as will enable them to prepare their defense and avail themselves of their conviction or acquittal as a bar to further prosecution for the same cause.

(4) The indictment and each count thereof alleges insufficient facts to show that defendants obstructed, delayed or affected commerce or the movement of articles and commodities in commerce.

(5) The indictment and each count thereof alleges insufficient facts to charge that commerce was substantially

obstructed, delayed or affected or that the movement of articles and commodities in commerce was substantially obstructed, delayed or affected.

(6) The indictment and each count thereof fails to show in what respect or respects commerce was obstructed, delayed or affected, and further fails to show the means and methods or how any acts of these defendants affected such commerce, or how such commerce was affected.

(7) The indictment and each count thereof purports to allege an attempt to obstruct, delay or affect commerce but fails to allege any overt acts committed by these defendants or any acts whatsoever in furtherance of such an attempt.

(8) Counts 1, 2, 3, 4, 5 and 6 purport to charge extortion within the meaning of Section 1951, Title 18, USC, however, each of the said Counts fails to allege sufficient facts to charge such extortion.

(9) Each of the said Counts 1, 2, 3, 4, 5 and 6 alleges the attempted obtaining of property from another with his consent inducted and obtained by the wrongful use of actual and threatened force, violence and fear; such
19 language is incomplete to state a charge under the law in that it fails to allege any acts comprising the wrongful use of actual or threatened force, violence or fear, nor does it allege in what respect defendants' conduct was wrongful, nor does it allege any act or acts constituting the use of actual or threatened force, violence and fear, nor how such act or acts affected interstate commerce.

(10) Counts 3, 4, 7 and 8 purport to allege that defendants committed and threatened physical violence to another person or property in furtherance of a plan or purpose to obstruct, affect or delay commerce, however, each of said Counts fails to allege in what manner such attempt was made and fails to allege any acts comprising such physical violence and fails to allege in what respects said acts would affect commerce.

(11) Count 9 of the indictment purports to allege a conspiracy to commit offenses upon the part of the defendants to violate Section 1951, Title 18, USC, however, said Count fails to allege in what manner the defendants so conspired, and fails to allege any overt acts in furtherance of said conspiracy.

(12) The indictment and each count thereof allege mere conclusions, as distinguished from statements of facts, and therefore, does not charge the ingredients of which the alleged crime is composed so as to inform the defendants of the essential facts of the charge they must meet.

(13) The indictment and each count thereof fails to allege sufficient facts to give the court jurisdiction over the offense purportedly charged.

(14) The mere allegation that the defendants acted wrongfully is a conclusion and cannot take the place of averring facts showing such wrongful conduct.

(15) The indictment and each Count thereof fails to allege any criminal intent upon the part of either or both of these defendants.

20 II.

Duplicity and Multiple Accusations.

(1) Count 3 of the indictment is duplicitous for the reason that it attempts to charge more than one crime in a single count; this count purportedly charges the defendants with attempting to obstruct, delay and affect commerce by committing and threatening physical violence to Arthur W. Terry, Jr.; it also purportedly charges the defendants with attempting to obstruct, delay and affect commerce by extortion and obtaining money from the said Arthur W. Terry, Jr. These two accusations are improperly joined in a single count.

(2) Count 4 of the indictment is duplicitous for the reason that it attempts to charge more than one crime in a single count; this count purportedly charges the defend-

ants with attempting to obstruct, delay and affect commerce by committing and threatening physical violence to Frank P. Luhning; it also purportedly charges the defendants with attempting to obstruct, delay and affect commerce by extortion and obtaining money from Ralph Wright, Jr. These two accusations are improperly joined in a single count.

(3) Count 5 of the indictment is duplicitous for the reason that it attempts to charge more than one crime in a single count; this count purportedly charges the defendants with attempting to obstruct, delay and affect commerce by committing and threatening physical violence to Arthur W. Terry, Jr.; it also purportedly charges the defendants with attempting to obstruct, delay and affect commerce by extortion and obtaining money from the said Arthur W. Terry, Jr. These two accusations are improperly joined in a single count.

(4) Count 6 of the indictment is duplicitous for the reason that it attempts to charge more than one crime in a single count; this count purportedly charges the defendants with attempting to obstruct, delay and affect commerce by committing and threatening physical violence
21 to Frank P. Luhning; it also purportedly charges the defendants with attempting to obstruct, delay and affect commerce by extortion and obtaining money from Ralph Wright, Jr. These two accusations are improperly joined in a single count.

III.

Invalidity of the Statute.

(1) Section 1951, Title 18, USC is void and in contravention of the 5th and 6th amendments of the United States Constitution insofar as it makes it an offense to obstruct, delay and affect commerce, and the movement of articles and commodities in commerce by extortion for the reason that the term "extortion" is defined in the statute as the

obtaining of property from another with his consent inducted by wrongful use of actual or threatened force, violence or fear, or under color of official right.

(2) Said Section 1951 is too general in terms, and fails fully, directly and expressly to set forth, with certainty and without ambiguity all of the essential elements necessary to constitute an offense thereunder.

(3) The said Section 1951 is vague and ambiguous by reason of which same could be applied to activities declared by Congress and the Courts of the United States to be legal labor activities, that is, innumerable labor activities which have expressly been declared legal by Congress and the Courts of the United States could be brought within the terms of the said Section 1951 by reason of the vagueness and ambiguity of said terms, thereby making such legal activities illegal.

(4) The word "wrongful" used in Section 1951 is so vague, indefinite and uncertain that persons of ordinary intelligence cannot in advance tell and there can be no differences of opinion as to whether certain acts are within its prohibition; the use of such word does not ade-
22 quately advise or give fair warning as to what acts or conduct are prohibited, improperly leaving to conjecture the meaning of such word.

(5) The failure of Section 1951 to adequately describe and define the offense of obstruction of commerce by means of extortion because of the use of the word "wrongful" is repugnant to the provisions of the 6th Amendment which guarantees to an accused the right to know the nature of the charges and a conviction under this portion of the statute would deprive an accused of life, liberty and property without due process of law in contravention of the 5th Amendment.

Schaefer O'Neill,
A. M. FitzGerald,
Attorneys for Defendants.

23 IN THE UNITED STATES DISTRICT COURT.
• • (Caption—5236) • •

SUPPLEMENTAL MOTION.

(Filed Feb. 23, 1954. G. W. Schwaner, Clerk.)

As and for additional grounds in support of their original Motion to dismiss the indictment in the above entitled cause, the defendants, Jack Green and General Laborers' Local No. 397 of Granite City, Illinois, a Labor Union and Voluntary Association of Workingmen affiliated with International Hod Carriers Building and Common Laborers Union of America, by A. M. FitzGerald and Schaefer O'Neill, their attorneys, hereby add:

Immediately following paragraph 11 of Part I of the said original Motion, the following sub-paragraphs:

(a) The language of the Count 9 is ambiguous, uncertain, incapable of understanding, and susceptible to more than one meaning.

(b) Defendants are unable to ascertain from the said Count 9 of the Indictment just what they are charged with having conspired to do; they are unable
24 to determine whether they are being charged thereby with conspiring to obstruct, delay and affect interstate commerce, or whether they are charged with conspiring to extort, or what the object of such extortion was, or whether they are charged with having conspired to attempt to commit any crime, or whether they are charged with having conspired to commit or threaten physical violence to divers persons and property.

(c) The only conspiracy that can be charged having reference to an offense under Section 1951, Title 18, USC, would be a conspiracy to obstruct, delay and affect interstate commerce; this, the said Count 9, fails to do.

(d) Said Count 9 fails to allege the requisite in-

tent to commit a criminal act, or to do anything wrongful.

(e) Said Count 9 fails to describe the participants in the purported conspiracy, the defendant Labor Union, as such, being incapable of conspiring.

(f) Said Count 9 fails to allege with the necessary particularity the means by which any conspiracy was to be, or was, carried out.

(g) Said Count 9 purports to allege a conspiracy to attempt to commit a crime.

(h) Said Count 9 fails to allege any overt act to effect the object of the purported conspiracy, or in furtherance thereof.

(i) The language of the said Count 9 having reference to the contemplated crime attempts to follow the language of the statute defining such crime, however, such statute is too broad in its terms to permit the accused to learn from the indictment the nature of the offense with which he is charged.

(j) The allegation that the defendants conspired to commit an offense against the United States, without properly defining such offense, is a mere conclusion.

Immediately following paragraph 15 of Part I of the said original Motion, the following additional paragraph.

(16) The mere use of the word "wrongful" in all Counts of this indictment is an insufficient description of any act or conduct upon the part of the defendants, the said term being so uncertain in meaning; the indictment and all Counts thereof fail to allege in what respect or in what manner any act or conduct of the defendants is wrongful, the attempt to characterize any act or conduct as wrongful being a mere conclusion.

Schaefer O'Neill,
A. M. FitzGerald,
Attorneys for Defendants.

25 IN THE UNITED STATES DISTRICT COURT.
(Caption—5236)

ADDITIONAL SUPPLEMENTAL MOTION.

(Filed Mar. 18, 1954. G. W. Schwaner, Clerk.)

Leave of Court first having been secured, now come the defendants, Jack Green and General Laborers' Local No. 397 of Granite City, Illinois, a Labor Union and Voluntary Association of Workingmen affiliated with International Hod Carriers Building and Common Laborers Union of America, by A. M. FitzGerald and Schaefer O'Neill, their attorneys, and file this Additional Supplemental Motion, and move the Court to dismiss the indictment for the further reasons:

(1) The indictment was induced and returned because of the prejudicial and improper examining of witnesses who appeared before the Grand Jury by questions being asked which had nothing to do with the charges contained in the indictment, but asked solely for the purpose of prejudicing members of the Grand Jury against the defendants.

26 (2) That the elements essential to be established in order to sustain the indictment and each count thereof, were not explained to nor understood by the members of the Grand Jury, and no sufficient evidence was produced to warrant any indictment under the so-called Hobbs Act, Section 1951, Title 18, USC, upon which the indictment was based.

(3) The indictment, in Counts 1 through 9, fails to set forth the facts and circumstances sufficient to support the allegation that the defendants sought to obtain property of Arthur W. Terry, Jr., wrongfully and corruptly, by use of force, actual or threatened, or by any other means, lawful or unlawful.

Schaefer O'Neill,
A. M. FitzGerald,
Harold Greenberg,
Attorneys for Defendants.

27 IN THE UNITED STATES DISTRICT COURT.
(Caption—5236)

MOTION TO STRIKE ADDITIONAL SUPPLEMENTAL MOTION.

(Filed Mar. 19, 1954. G. W. Schwaner, Clerk.)

United States of America, by John B. Stoddart, Jr., United States Attorney for the Southern District of Illinois, respectfully moves the Court to strike the additional supplemental motion filed in behalf of the Defendant in the above entitled cause with respect to paragraphs numbered (1) and (2), and as reasons therefor states as follows:

1. The unsupported allegations contained in paragraph numbered (1), even if true, do not constitute a ground for the dismissal of the Indictment.

2. The unsupported allegations of paragraph numbered (2), even if true, do not constitute a ground for the dismissal of the Indictment.

3. The allegations contained in both paragraphs numbered (1) and (2) are insufficient at law, and are unsupported by affidavit. There is no showing that grounds exist for a motion to dismiss the Indictment because of matters occurring before the Grand Jury, and a mere request for a hearing to determine what occurred before a Grand Jury, without any statement of facts indicating improper activity by the Grand Jury, is insufficient to afford a hearing in this respect.

28 4. Rule 6(e) of the Federal Rules of Criminal Procedure is not satisfied by the mere statement or allegation that improper activity to the Defendant's prejudice occurred in the Grand Jury proceedings.

5. It is highly improper for such scandalous, improper

and impertinent allegations to be made impugning or attacking the motives of the Grand Jury without supporting affidavits which would indicate such improper activity.

6. The preservation of the inviolacy of Grand Jury proceedings requires that the motion to strike the aforementioned paragraphs be allowed.

United States of America,
By John B. Stoddart, Jr.,
United States Attorney as aforesaid.

I hereby certify that at the hour of 5:00 P. M. on March 19, 1954, I placed a copy of the foregoing motion in a postage prepaid envelope addressed to:

Mr. A. M. FitzGerald
Attorney at Law
Ridgely Building
Springfield, Illinois

Mr. Schaefer O'Neill
Attorney at Law
Alton Banking & Trust Company Building
Alton, Illinois

and that the said envelopes bore the return address thereon of U. S. Department of Justice, Southern District of Illinois, Office of United States Attorney, Springfield, Illinois, and thereupon deposited the same in the United States mails in the Post Office at Springfield, Illinois, for transmission and delivery to the addressees named thereon.

Anna M. Shaughnessy.

1-2 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—5236) * *

Appearances:

John S. Stoddart, Jr., Esq., U. S. District Attorney; Marks Alexander, Esq., and R. B. Oxtoby, Esq., Assistant U. S. District Attorneys for the plaintiff.

Arthur FitzGerald, Esq., Springfield, Illinois, and Schaefer O'Neill, Esq., Alton, Illinois, for the defendants.

September 14, 1954
September 15, 1954
September 16, 1954

3 OPENING STATEMENT ON BEHALF OF THE GOVERNMENT.

The Court: You may proceed with the opening statement.

Mr. Alexander: Your Honor, we believe that it is a case in which there should be a witness exclusion order.

The Court: All right.

What did you have?

Mr. O'Neill: The question is that we have a good many members of Local 397 up here, that is a defendant in this case.

The Court: Well, if they are a defendant, of course they are entitled to stay in here.

Mr. Alexander: Your Honor, there are only two defendants in this case: Local union and individuals.

Mr. O'Neill: Well, these individuals are Local 397 members.

The Court: You can retain at the trial, of course, any

representative that you want of that organization. It is an organization, it is not sued as an individual.

Mr. O'Neill: So I understand the ruling that excludes them from the court room, and a good many of them aren't here now.

The Court: All witnesses in this case on both sides, whoever you may be, are asked to retire from the court room and stay from the court room until you are called. The bailiff will try to find some place for you where you can remain outside. That is a request on the part of the attorneys in this case. All other persons not witnesses may remain in the court room, of course.

Now if you have any member of your organization that you want to retain inside, you may do so.

Mr. O'Neill: I don't think so, your Honor.

The Court: Now I will ask you this, gentlemen:

This is a request. There are a lot of witnesses here—I take it there. It seems a lot of people are running up and down the hall. Watch your own witnesses. I cannot keep track of them every morning and every night. I don't know who they are, and if you attorneys will assist in that, it will save us a good deal of trouble as we go along.

Mr. Alexander: If the Court please—

The Court: Mr. Alexander.

Mr. Alexander: Ladies and Gentlemen of the Jury:

It comes my duty to outline to you what this case is about.

This is a criminal charge against the defendant Jack Green and a local union which is known General Laborers Local No. 397 of Granite City, Illinois, a labor union and voluntary association of working men affiliated with the International Hod Carriers Building and Common Laborers Union of America.

Now, the purpose of an opening statement is to make an effort, at least, to set forth what we believe the evi-

dence that the Government will produce to be in a logical form, so that as the witnesses take the stand and tell their respective stories, you will be able to put their evidence in the proper place in the picture so that at the conclusion you have got a picture of what the Government produces to support the charge which is contained in the Indictment. Unfortunately, in a case which covers a period of time, we are unable to call the witnesses to prove what happened on this day, and all of them to produce on this day, and then the next day and then the next day, because maybe our first witness will know what happened on the first day, and the fifth day and the seventh day, and we have got to have him tell his whole story when we first produce him in so far as we can. So that much of the evidence will come to you out of its proper order.

But I am going to try to outline the facts and what we believe the evidence will be in a chronological order so that as these witnesses tell their stories, you will be able to have a picture of the whole thing and place the evidence in the proper part of the picture where it belongs.

Now as to the law, of course, the court determines what the law is and instructs you as to the law. In other words, if there is any question of interpretation of the law, the court will give it to you at the close of the evidence, and it is your duty, as we understand it, to follow the law as the court gives it to you. You are the judges of the facts: What actually occurred that caused this charge to be brought, what is the truth about what happened with respect to the charges in the indictment? You pass on those questions of fact, determine where the truth lies, and then you apply the law to those facts as the law is given to you by the court.

Now, however, some understanding of what the law is

is necessary for you at the outset. So that, we will say to you that this is a prosecution brought under an Act of Congress originally passed sometime, I think, in 1934, and last amended in 1946.

7 And it is under the Act as it was in 1946 and subsequent years that this case is being prosecuted.

That Act is entitled "An Act to Protect Trade and Commerce against interference by violence, threats, coercion or intimidation."

It reads in part—I will want to read only those parts that we feel you should know something about before we enter this case.

> "This is an Act to protect trade and commerce against interference by violence, threats, coercion or intimidation, and as used in the Act the term 'commerce' means commerce between any point in a State, Territory, or the District of Columbia, and any point outside thereof; or between points within the same Territory, the State or District of Columbia, but through any place outside thereof.
>
> "In this Act, the term 'extortion' means the obtaining of property from another with his consent induced by wrongful use of actual or threatened force
8 or violence, or fear."

The Act then provides that whoever in any way or degree obstructs, delays or affects commerce, or the movement of any article or commodity income by extortion shall be guilty of an offense.

It further provides that whoever conspires with another or with others, or acts in concert with another or with others to do anything in violation of the Act shall be guilty of an offense.

And it also provides that whoever attempts or participates in an attempt to do anything in violation of the Act shall be guilty of an offense.

Now the indictment is the charge that is made by the Federal Grand Jury. It is not evidence against the defendant, nor is it evidence in favor of the Government. It is a document drawn up in a formal manner to inform the defendants of what they are charged with, to inform the jury of what they are to decide.

In this indictment, I think there are eight separate counts—no, there are nine separate counts. Each count charges a specific offense.

The first eight counts charge what are called substantive violations of the law and of the particular
9 Act of which I read you part.

Now I won't try to cover this entire indictment, but I am going to read to you a portion of the first count; and that count charges that on or about April 13, 1953, at and adjacent to the Chain of Rocks Canal in Madison County, Illinois, being a projected channel and conduit for traffic in interstate commerce on the Mississippi River and its tributary, Jack Green, one of the defendants, and this general laborers local union unlawfully and wilfully obstructed, delayed and affected commerce, and attempted to obstruct, delay and affect commerce, as that term is used in the Act that I read to you, interstate commerce, and as I have stated to you before, the court will tell you what the law is with respect to interstate commerce, and to affect and interfere with the movement of articles and commodities in such commerce by extortion, as that term is defined in the Act—that is to say, by attempting to obtain from another, to wit, from one Arthur W. Terry, Jr., doing business under the name of Terry Engineering Company and engaged in executing a contract with the United States of America for the maintenance of the
10 levee bordering this canal, and theretofore erected and constructed as a part thereof, to extort property of the said Arthur W. Terry, Jr., to-wit, his money in

the form of wages to be paid for imposed, unwanted, superfluous and fictitious services of laborers commonly known as "swampers" in connection with the operation of machinery and equipment then being used by said Terry in the execution of his contract with the United States for the maintenance of the levee, the attempted obtaining of said property being then intended to be accomplished with the consent of said Terry induced and obtained by the wrongful use, to-wit, the use of actual and threatened force, violence, and fear made to said Arthur W. Terry, Jr.

Now, in that count and in the subsequent seven counts, making eight in all, similar offenses are charged.

Now, some of them refer to the same instances that occurred on the 13th of April, 1953, as in the first count.

In the drawing of charges of this kind, one count may be based on one part of the Act that it is alleged had been violated, and another count may, covering the same incident, may be based on another portion of the Act, so that they are separate offenses and are so charged. And I will try to tell you now that these separate—how these separate counts differ from one another.

Count 1 refers to the incidents of April 13, 1953, and to an alleged threatening conduct toward Arthur Terry, Jr.

Count 2 refers to instances that occurred on March 26, 1952, involving alleged threats against one Ralph Wright, Jr., who also had a maintenance contract on this same levee, it being alleged that the threatening conduct was directed towards Ralph Wright for the purpose of extorting money from him in the form of wages to be paid to unwanted employes.

Count 3 is substantially the same as Count 1, except it uses a little different language based upon a different

portion of the Act and it involves threatening conduct direct at Arthur W. Terry, Jr.

Count 4 is the same as Count 2 in general, the language being a little different, and it refers to the incident on March 26, 1953, at which time it is alleged that threats were made towards one Frank P. Luhning, an employe of Ralph W. Wright, who was then operating a machine for Mr. Wright in connection with this contract, it being alleged that these threats were made for the purpose of compelling Mr. Wright to employ this unneeded laborer, unwanted labor on this project.

Now Count 5 is again substantially the same as Count 1.

Count 6 is substantially the same as Count 4.

Count 7 is substantially the same as Count 1, one couched in a little different language and terms to meet the evidence which we feel is applicable to that particular count.

Now aside from what we call substantive offenses, that is to say direct violations of law which are in the nature of the violations charged in these first eight counts, we have in this statute a provision that anyone who conspires to commit such offenses is guilty of an offense, and the ninth count in this indictment charges that the defendant Jack Green and this same labor union and numerous other persons whose names were unknown to the Grand Jury conspired together with themselves, between themselves and with others to commit the several offenses that are charged in Counts 1 to 8 of this indictment.

A conspiracy is the working together, the planning to commit an offense against the law which is in itself punishable, whether they ever fully carry out the plan or conspiracy or not, if they actually conspire to do the act, then they are guilty of that.

Now this may seem rather complicated to you. I have tried to make it as clear as I could. I am sure as the evidence is heard and the jury get instructions from time to

time by the court as to the law, that when you finally have to pass upon these issues as presented in each individual count, that you will have proper understanding of what your duties and obligations are with respect to this case.

Now the evidence that the Government will produce will be, first, to try to draw a picture for you of the place in the commerce of this nation of the Mississippi River and its tributaries. We will produce evidence showing to some extent all that is necessary we feel, the amount of commerce that is carried up and down the Mississippi River and its tributaries from one State to another for distribution about this country.

The evidence will show that there are certain navigational hazards in the Mississippi River down opposite or approximately opposite the City of St. Louis, I think as a matter of fact it is a little north of St. Louis proper, but certainly generally north of the St. Louis industrial area. Those hazards are such that in connection with the general plan that has been carried on for many years to construct a nine-foot canal or, rather, a nine-foot channel in the Mississippi River from New Orleans up the river, I don't know just how far, certainly beyond the mouth of the Illinois River at Grafton and thence up the Illinois River to Chicago, that the purpose of that is to make a navigable channel that will be navigable at, I think, all times of the year, even during the winter months—I am not so certain about that—but I think the evidence will indicate that that is the present idea.

Now during low stages of water the hazards in the Mississippi River near St. Louis manifest themselves. There is a sort of rock chain that runs off into the river from the Missouri side, and in low water there will not be a nine-foot channel, and I think at all times it is rather dangerous to navigate. So, many years ago it was planned to construct a canal down in the

neighborhood of Kansas City, canal that is about nine miles long and runs through Madison County, Illinois. I think it begins at the south end of Madison County and runs in a sort of semi-circle up through Madison County where it again joins the Mississippi River and traffic coming down the river enters that channel and avoids these hazards, the traffic going up the river enters the channel at the south end and avoids the hazards.

Now a channel or canal of this kind in a valley such as the Mississippi River, with its flood stages that are unpredictable from time to time, requires the construction of levees to protect the canal, and such a levee was constructed approximately on the site of a former levee that was built to protect portions of Madison County and St. Clair County from the flood stages on the Mississippi River.

16 In other words, that levee protects all of the industrial area of Madison County and St. Clair County, and I think the evidence will be produced here to show you the extensive commerce of an interstate nature that has its beginning right there in Madison County and St. Clair County. I don't know just when this canal was practically completed, but I think the evidence will show that it was sometime possibly in the late fall of 1952 or early winter of 1953. At any rate, a levee of that nature called for constant maintenance, particularly it required extensive maintenance at that time before it had become well-sodded. All well-constructed levees are seeded so that a sod is formed on top that protects it from erosion.

This levee is at the place where the canal is, is largely made up of sand pumped from the bottom of the Mississippi River. I think before the event that makes up the charges in this case had occurred, the levee had been seeded maybe at least in part, but there were certain sections of that levee where either the seeding was not effective or the seeding had not been completed, where there was exten-

sive erosion. The rains washed the sand down, and I
17 think when a man whom we will produce testifies, he will explain to you the necessity, the importance of maintaining that levee in order to preserve this channel of interstate commerce.

I won't try to go into the details about that.

At any rate, the evidence will show that the United States Corps of Engineers entered—the United States entered into a contract with Mr. Terry, whose name I have given to you before, to fill up these eroded holes and runlets in the levee, and to level the levee off so that it could be either seeded or re-seeded so that they could bring about a growth of sod there that would protect it. That was on one portion of this levee.

Another portion had a different date. They let a contract to Mr. Wright, I think, who operated the Midway Excavating Company. Both of these contracts were substantially the same, if not identical. They called for the renting to the Government of the necessary equipment in the shape of scoopers, scoops, bulldozers, and—oh, this ma-
chinery they use to level off the ground, pulled by—I
18 think they are generally pulled by bulldozers, or else they push a blade in front of a bulldozer.

The contracts called not only for the furnishing of this equipment, but for the furnishing of the operator of the equipment, all to be carried on—all the work to be carried on under the inspection of the Corps of Engineers of the United States Army.

Now, Mr. Terry operated a construction contractors business over in a small town near St. Louis, Missouri, and he had this earth-moving equipment and entered into this contract to do this work in the State of Illinois, and to furnish the operators.

He operated entirely with union labor, and on these machines which he sent over to operate on that work on that

levee he employed union members, I think a local union of Hoisting Engineers of East St. Louis.

Mr. Wright—I don't know just exactly where his business office is located—but he operated a similar company, I think, from some town in Illinois, down in the south
19 of Granite City, I believe it is, Collinsville—at any rate, he entered into a similar contract. He also used in his operations union labor, employing members, I think, of the same local union from East St. Louis.

The work was begun possibly in the late fall of 1952, and of course from time to time weather interfered with it and there were delays, and it was carried on from time to time thereafter up until some time in March of 1953 the incidents occurred which are the basis of this indictment.

I think the evidence will show that the defendant Jack Green is what is known as the business agent of Local 397 of Granite City, a voluntary association of working men affiliated with the International Hod Carriers Union.

Now, he was the business agent during all of this period of time and prior thereto—how long, I don't know what the evidence will show.

On March 23, I think the evidence will show, while Mr. Wright—I think Mr. Wright's men were operating part of his equipnfent on this contract, this contract that he had with the United States—I think the man's name was
20 Frank Luhning and was operating, and his name appears in one of these counts, he was operating this equipment leveling off the levee and filling up the holes and places in the levee that had eroded, and Jack Green came down there to where he was working, and in substance—I'm not going to try to tell you just what the conversations are, all of these, there will be a great many conversations here, and for me to try to tell you, to remember what they were and tell you what they were, I might mislead you. It would be better for you to hear the conversations as given by the witnesses themselves.

I can say this, that in substance Mr. Green asked Mr. Luhning where his swamper was.

Now, a swamper is a technical term used in the general labor trade, or in this particular business for laborer who helps in the operation of one of these machines; and the substance of the conversation went on:

Luhning said, "Why, I don't have a swamper. One of them isn't necessary on this kind of a job."

And then Green said, "Well, you tell—"

I think there was some conversation to the effect
21 that Luhning had no authority anyway, he was just driving the machine, that Mr. Green should talk to Mr. Wright. And then it followed that when Green told Luhning, "Well, you tell your boss to be down here on the job tomorrow and I will talk to him," something along that line.

Now, he was there attending to his duties, doing his business.

But on the next day Mr. Wright, after Luhning reported to him, went down to the levee and remained there for a long time, and Mr. Green did not, I think, appear. I think the same thing occurred on the 25th of March, and then on the 26th day of March, while Luhning was operating this same equipment for Mr. Wright, some six men appeared on the scene and told him certain things on this same subject matter of employing a swamper. I am not going to try to tell you what they were. It will be up to you to decide whether it was a case of a use of force or threats, rather than the negotiation, rather than a matter of negotiation between union membership through their officers and an employer. At any rate, what followed was that Luhning got off his equipment, stopped it, left
22 it there, and reported to his employer, Mr. Wright.

Now on this same day Mr. Terry was operating his equipment on another portion of the levee, and on that day

some ten or twelve men in the morning came down to that work site where there were some two or three employes of Mr. Terry, and substantially the same thing occurred as had occurred with respect to Mr. Wright's employes. In other words, the machinery was shut down, the men went to their homes, and the man in charge—I think there was a foreman in charge—reported what had occurred to Mr. Terry.

Now from that time on until April 13th, which is the date in the first count of this indictment, no more work was done in the maintenance of this levee; and in fact, work was never resumed by Mr. Wright on his contract with the Government.

I don't mean to say that this maintenance was never carried out, but what I am calling attention to is that from March 26th to April 13th there was a delay in the proper maintenance of this levee and in the carrying out of this contract—these contracts, as the evidence will show.

23 Now on April 13th there was quite a bit that occurred.

For one thing, on about that date, Mr. Terry got directions from the War Department that he had to resume the carrying out of his contract, and he decided that he would attempt to resume work on his contract which called for the furnishing of these machines and the operating labor.

He proposed to carry it out without employing what he felt to be unnecessary, unwarranted labor.

He proposed to carry it out with his own union employe, and I think the evidence will show he made rather elaborate plans.

He was familiar with what happened on March 26th when his workers were stopped, and in connection with his plans he called upon, I think, either the sheriff or a deputy sheriff of Madison County, Illinois.

In preparing to go to the work site, he employed two men to go with him as guards.

I may be mistaken on the exact time of these various incidences which I think the evidence will show as to
24 what I now relate.

Mr. Terry went to this work site rather early in the morning, possibly before eight o'clock. He was accompanied by two men who will be called here and will testify for the Government.

I won't try to tell the jury now just their purpose was. We will let that come from the lips of the witnesses themselves.

At any rate, he arrived at the work site, and I think it will then appear that someone, either some employe or some Government inspector who was at the site, recognized Mr. Green's car in the vicinity of this work site.

I think the evidence will show he saw this car and saw the car leave almost immediately.

I think the evidence will show that on that morning Mr. Terry called, or tried to call Mr. Green but I think he actually got in contact with Mr. Green and was told in substance that he would not operate his machines without the employment of a swamper on each machine.

Now that telephone conversation may have been the day before, but I think it was this same day.

25 Now we next go to Granite City, and in Granite City there are a great many plants which employ members of this Local Union No. 397.

For one, there is a Ross Engineering Company, and another, and on this morning certain members of the union who were employed at these various plants—I don't know how many—went to work in the usual fashion, checked in with their time cards, and suddenly without any notice to their respective employers they moved about and got their cars and drove down to the union headquarters, which are in Granite City, the headquarters of this local union. How many there were exactly, I don't know. I don't know that anyone knows.

There is witnesses, I think, who will be permitted to estimate the numbers. At any rate, I think there were approximately a hundred that came from South Hampton, I believe, and I think the evidence will show that almost as one man they went down to their union headquarters. I think the same thing happened at the Ross Engineering Company, that they got up as one man, all of a sudden got up around 9:30 in the morning, went down to the
26 union headquarters and gathered about the building.

I'm not going to try to tell you what happened there. There will be evidence of what happened there. There will be evidence of Mr. Greey talking to certain members, and possibly officers of his union; I think one officer in particular who was a shop steward at one of these plants. Then possibly along about ten o'clock or thereabouts, Mr. Green came out of the office building, went through this crowd, got into his car, and as he got in, or approximately at the same time he got in, he waved his arm and said, "Come on, we are going out for the levee."

With that, all this body of men went out to the levee. They lined their cars up on this road in numbers somewhere between, I would say, seven hundred and fifteen hundred men, climbed up on the levee where Mr. Terry's machinery was located on the—I think the slanting side of the levee where they had been working.

They surrounded Mr. Terry's car. They surrounded a car in which a Government inspector was who had come to the work site. They surrounded this piece of equip-
27 ment. I think there was only one piece of equipment there that day. All operations, of course, stopped then and there.

Now at the scene we will find that there was a sheriff, a deputy sheriff, possibly two or three of them.

There was Mr. Terry with the two men that he had brought with him from St. Louis, and I am not going to try

to tell you what occurred there. Suffice it to say that the charge of the threat, this attempt to force Mr. Terry to employ what he called unwanted labor, what he called unnecessary labor for this operation, that there the threat was made by the action of this large group of men who surrounded and stopped these operations. I think it best to let the witnesses tell just what they will, and from that evidence and from the evidence of the other work stoppages, it will be your duty to pass upon whether or not this defendant and this local union operating through him and possibly through other officers of the union attempted to extort from Mr. Wright and from Mr. Terry their money in the form of paying wages to an employe who would
28 have no work to do. And if the effe[illegible] of their effort of what they did thereby, plus by the use—[illegible].

Mr. FitzGerald: If the Court please, this is nothing but argument.

The Court: Objection sustained.

Mr. FitzGerald: Did the court sustain the objection?

The Court: Objection sustained.

Mr. Alexander: We will simply say what occurred. There is a final charge in the whole indictment here which appears in the first count of the indictment, and it will be the duty of the jury to pass upon whether or not there was such a violation of this statute on any one of the occasions as charged in the various counts of this indictment up to and including Counts 1 through 8, and whether or not there was a conspiracy to commit such offenses in connection with this levee work on the Chain of Rocks Canal.

I believe that is all.

The Court: Do you want to proceed now for fifteen minutes, or would you rather wait until tomorrow?

Mr. O'Neill: I would prefer to wait until tomorrow morning, your Honor.

29 The Court: That is all right. Then you may make your opening statement tomorrow morning.

Now ladies and gentlemen of the jury: I know you are in a position in the City of Quincy where persons are not familiar with this case, and as far as I know, you will not be bothered or approached by people trying to tell you what your duty as a juror should be. That is one thing that we don't stand for in this court.

If anyone should approach you and attempt to tell you what you should do, walk away from him and notify this court, if you will, because you have taken an oath to try this case fairly and impartially, and the court expects you to do it, your Government expects you to do it, and everybody else expects you to do that and it just is not fair for you not to do that.

Now there will be some articles in the newspapers evidently about this case. If I were you, I wouldn't read them. I can't tell you not to read them because it would be rather unfair, but I know that the reading of an article there that comes through our own local paper as fair as it might attempt to be, is no aid to you because you sit here and listen to all of the evidence, you know all about it.

I remember several years ago I happened to be a State's Attorney for this community and went up to visit my father who lived up at another town. My father told me what took place at that trial.

I said, "Oh, no, it didn't."

Dad said, "It did. I read it in a newspaper."

And I have always thought that dad was a little wrong about that.

So your duty is purely and simply to listen to the evidence in this court room, listen to the attorneys with their arguments and what they feel the evidence shows, to accept the law as given to you by the court, and then walk out in all honesty and in all justification and determine the issues in the case.

So in addition I wouldn't talk about it among yourselves.

You have not heard any evidence yet, that is true; but when you do, there will be some testimony, and you may be one to laughingly remark, "Well, that settles it," or something like that.

Well, you are not all women on this jury. Women can often change their minds, where you men are not supposed to.

31 So wait until all of the evidence is in, and then determine the case. That is the only fair way to do it, and it is fair to both sides and it is fair to yourselves.

Then too, be back promptly tomorrow morning at ten o'clock. That is, you men—some of you are called away from your business—it will give you an opportunity to get yourselves straightened out then.

Be back promptly at ten o'clock, and every time the court adjourns.

I will try to be here. Sometimes I am not here because I am held up on the other side, but be back promptly at ten in the morning. Your hours will be as best we can from ten to twelve-thirty, and from two o'clock to four-thirty. So you can govern yourselves in that direction. Perhaps you can help yourselves take care of some of your business dealings you have here in the city and it will give some of you farmers an opportunity to go home.

Now that is about all I want to tell you. Keep your minds open and free. You may now retire, and be back tomorrow morning at ten o'clock. You may retire.

(Whereupon these proceedings in the above-entitled case were adjourned until the following day, Wednesday, September 15, 1954, at 10:00 o'clock a.m.)

32 Before Judge Adair

September 15, 1954
Quincy, Illinois.

Court reconvened in the above-entitled cause at the hour of 10:00 o'clock a.m., September 15, 1954, pursuant to adjournment.

Present: Same as before, to-wit:

Mr. Alexander, Mr. Oxtoby, Mr. Stoddart, appearing on behalf of the Government;

Mr. O'Neill, Mr. FitzGerald, appearing on behalf of the defendants.

33 The Court: The defense may make its opening statement.

OPENING STATEMENT ON BEHALF OF THE DEFENDANTS.

By Mr. O'Neill:

May it please the Court—

The Court: Mr. O'Neill.

Mr. O'Neill: I want to get my breath just a minute. I walked over a little fast.

Ladies and Gentlemen of the Jury: As Mr. Alexander told you so well yesterday, at the beginning of a suit of this kind the court usually affords to each side an opportunity to explain what they expect the evidence to show in order that you might more clearly and reasonably follow that evidence as it is presented to you on the witness stand by the witnesses who will be called and who will under oath testify in this case.

The Court: Mr. O'Neill, will you pardon me for a moment?

If there are any of you in the room that are witnesses, I

will ask you to be excused; otherwise, you may remain as you are. I thank you.

34 Mr. O'Neill: As Mr. Alexander told you, the court will tell you what the law is in this case, and he will tell you that after all of the evidence is in.

He may sometimes make rulings as to what the law is when the testimony is being presented; but the facts in the case belong particularly and peculiarly to you. The facts will be the evidence which will be presented here in the form of testimony of witnesses, in the form, I suspect of innumerable exhibits both on the part of the Government and on the part of the defendants.

But before we discuss with you what we expect to prove as a matter of fact on behalf of the defendants in this case, I think also that it is important that we renew a little bit your acquaintance with the law that is the background of this case, somewhat along the lines that Mr. Alexander explained it to you yesterday, not with the idea of repeating or imposing on you about that law, but perhaps to emphasize the particular portions of it that we believe are applicable here.

The law is called generally between attorneys and courts, the Hobbs Anti-Labor Racketeering Act, or the Hobbs

35 Anti-Racketeering Act. It was a renewal of a law that was passed originally in 1934 by the Congress and rewritten generally in 1946 and introduced by and passed by Congressman Hobbs. It comes under what is called the Commerce Section of the United States Code, and it provides generally—it is not a long Act at all, it is all-encompassed in one page of the U. S. Code. But it says generally that whoever in any way or degree obstructs or affects commerce or the movement of any article or commodity in commerce by robbery or extortion, and those words I would like to impress on your minds, by robbery or extortion, or attempts or conspires so to do, or commits or threatens

physical violence to any person or property in furtherance of any plan or purpose to do anything in violation of this Act—that means to do anything to obstruct interstate commerce—is guilty of a violation of the Act.

And then the Act has that little paragraph—has three definitions after it.

One of them is a definition of "robbery".

The other is a definition of "extortion", and the third is a general definition of "interstate commerce."

36 Those definitions are very brief.

The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another against his will by means of actual or threatened force or violence or fear of injury, immediate or future, to his person or property or property in his custody or possession.

Then comes the definition of the word "extortion," and we believe the evidence in this case will be confined to attempts to interpolate or convince or show that there was extortion in this case.

The term "extortion" means the obtaining of the property from another with his consent induced by the wrongful use of actual or threatened force, violence or fear, or under the color of official right.

Now that is "extortion" as defined in this Act, which these defendants, ladies and gentlemen, are charged with violating.

And the final definition is the definition of the term "commerce", with which I am sure all of you are reasonably familiar. Very briefly, it says that the term "commerce"

means commerce within the District of Columbia or

37 any territory or possession of the United States. That means anything that transpires in the District of Columbia or the territory of the United States is commerce, but does not have to go across the line, and that is because

the United States has jurisdiction and sole jurisdiction over the District of Columbia and the territories or possessions, and commerce also means all commerce between any point in a State and a point outside of that State; and finally, all commerce between two points within a State, if at some time during the course of that commerce it passes over the State line and then comes back in. This might happen in a place like Quincy when you come across the river and then go back into Missouri again. It would be commerce between two points in Missouri, but passing through Illinois would make it interstate commerce.

Now that is the legal background, that is the law background of this criminal case.

In order to bring the case to this court and bring it before you folks as jurors, a grand jury in the Southern District of Illinois returned an indictment which, of course, was prepared by that grand jury under the supervision of the United States Attorney and his able assistants;
38 and that indictment contains, as Mr. Alexander said to you rather sketchily yesterday, nine counts or charges.

The first count in that indictment is a charge that these defendants, Jack Green, who is the curly-headed gentleman sitting over there (indicating), and the general laborers Local 397 of Granite City, Illinois, a labor union and voluntary association of working men affiliated with the International Hod Carriers Building and Common Laborers Union of America, hereinafter called the defendants, on the 13th day of April last year, 1953, violated the law which I have just read to you, or explained to you, by attempting to obtain from one A. W. Terry, who had a contract to do some work on the levee down there at the Chain of Rocks Canal down in my country, Madison County, by attempting to extort from him his money in the form of wages to be paid for imposed, unwanted, superfluous, and fictitious services of laborers commonly called "swampers".

The second count of the indictment charges that these same defendants about two weeks prior to that on the 26th of March attempted to obtain from another, being one Ralph Wright, Jr., then doing business as the Midway
39 Excavating Company, his money, using the same language as in the first count, only this is another individual, his money in the form of wages to be paid or imposed, unwanted, superfluous and fictitious services of laborers commonly called "swampers."

The third count of the indictment says that we charge everything against these people that we did in the first count, but we charge that further in addition to attempting to obtain the money from Mr. Terry, that these defendants did commit and threatened physical violence to Mr. Terry and his property.

The fourth count charges everything that is charged in the second count with reference to Mr. Wright, but once again charges that these defendants did commit and threatened physical violence to the person and property of one Frank P. Luhning, who was then and there an employee of Mr. Wright. This was on the 26th of February that the Wright incident they charge occurred.

The Terry incident they charge was on the 13th of April.

In Count 5 they recharge the allegations in Count 1, what they charge further that these defendants did,
40 and attempted to or did violate the Act by extorting—that is to say, by attempting to obtain from Arthur W. Terry by the wrongful use in the manner and form aforesaid, of actual threatened force and violence to the person of Terry.

Count 6 charges the same extortion by threatened or attempted use against Wright—by the threatened or attempted use of force or violence against Wright.

Count 7 charges that the defendants did then and there

unlawfully commit and threaten physical violence to the person of Arthur Terry and commit and threaten to commit acts of physical violence to the property of Arthur Terry, then and there being in furtherance of a plan and purpose of the defendants to obstruct and delay commerce.

Count 8 makes that same charge in connection with a threat of physical violence to the person of Frank P. Luhning, and threatened physical violence to the property of Ralph Wright, Jr.

Then Count 9, which is called the conspiracy count, charges that all of these individuals—all of the members of Local 397, and Jack Green its business agent, and diverse other persons whose names are to the grand jury
41 unknown, conspired and continued to conspire together up until the date of this indictment to obstruct the commerce in violation of this Act, to obstruct interstate commerce and against the laws of the United States.

Now that is the charge, or these are the charges, ladies and gentlemen, which these defendants—and I say these defendants because none of the members of Local 397 are in court now—they will be in court as witnesses and therefore are not here now—but the Jack Green named specifically as a defendant is here. These are the charges that these defendants whom Mr. Fitzgerald and I represent, have brought before you as a jury and before this Court as the tribunal to answer.

Now what are the facts in the case, and particularly what evidence do we expect to show here?

My friend Marks Alexander, who is one of the most able and competent prosecutors in the whole Department of Justice, in my opinion, made an able exposition to you yesterday of what the Government expects would be presented to you as the evidence in this case, with two most unusual and most unexpected missing spots; and I will call your
42 attention to them when we discuss the evidence.

We think the evidence will show—and we agree with Mr. Alexander that the evidence will show—that the Chain of Rocks Canal itself is part of that great inland waterway system with which you people up in this part of the country are just as familiar with as we people down in Alton, the Mississippi River and its various tributaries. You have a dam of locks here, and we have a dam of locks down in Alton, and I understand they hook here up to Minneapolis, they are all part of the great inland waterway system.

The evidence will show, we believe, that about seven or eight years ago the Corps of Engineers, who operate out of headquarters in St. Louis, recommended, and I expect with the assistance of Congress—we haven't got into that much into the history of the thing—recommended the construction of a canal at a point just north of St. Louis and just south of where the Missouri River empties into the Mississippi, that has been known for long years as the Chain of Rocks. There is a bridge there that crosses from Illinois to Missouri. If I remember correctly, the great St. Louis public water system—its water plant is located approximately at the Chain of Rocks, and for years, I
43 think the evidence will show, that the inland waterway, the Corps of Engineers and the great river traffic up and down the river has had trouble negotiating that Chain of Rocks area; and as a consequence, under the direction of the United States Corps of Engineers, the Federal Government beginning about the year 1947 spent some $44,000,000 erecting a bypass around that Chain of Rocks in the form of a canal, a deep waterway canal that cuts straight south from a point below the little village of Hartford, which is just south of Wood River, Illinois, down past the city of Granite City and back into the Mississippi above the great bridges that go across the river at St. Louis there.

That canal, I don't know, is from nine to fifteen miles

long. It has a whole series of locks, and you can understand that when $44,000,000 was spent on the project that it was a big project.

The evidence will show that the project for the construction of that canal was so big that it could not be undertaken by any one construction company, but a group of them got together and bid the major part of the project.

One of the big operators was the MacWilliams Con-
44 struction Company. All of them were involved in contracts extending up to approximately $44,000,000, and involved in the construction of that canal, the evidence will show, was not only the moving of millions of square yards of dirt to cut that canal right through the fertile bottomland fields down there, through the Illinois fields and cut across the point there, but there was also involved a construction of a series of enormous locks or dams, locks to raise the traffic as it went along through that canal.

There was considerable drop in the river, I believe, between Alton and St. Louis; and they had to lock those barges and the traffic through there. We think the evidence will show in this case that involved in the construction of this project was practically every trade and labor union in the area.

The evidence will show that Madison and St. Clair counties on the Illinois side, and that St. Louis county on the Missouri side of that project are all highly industrialized areas, that they are all highly unionized, and as a matter of fact the project was what was known in the general contractual terminology as "a union job."

45 It was constructed by union laborers of fifteen or twenty crafts in the various phases of the construction.

We think that the evidence will show, ladies and gentlemen, that in the construction of this gigantic project generally under the supervision on the part of the Govern-

ment of the Corps of Engineers, and under the direct supervision of the big contractors who came in and took those jobs, and under the further supervision of smaller contractors who came in and either sub-contracted or took part of those jobs as did the Terry Engineering Company and the Midway Excavating Company for Ralph Wright, that from time to time there were difficulties not only between the contractors and the various labor unions but between the labor unions themselves; that in a highly unionized territory such as we live in, down in Madison and St. Clair counties, that various trades or labor unions get in conflict with each other, that there was a conflict, for example, not only between the laborers union, Local 397 of Granite City, and some of the contractors, but that there were conflicts between the unions themselves, such as the laborers union 397 and a union known as the Operating Engineers, Local 520 of East St. Louis whose members, I believe the evidence will show, operate the heavy equipment and machinery that was used in this great project, great pieces of earth-moving equipment moving millions of tons of dirt, doing all sorts of work that couldn't hardly be done by human beings. That equipment is operated by members of Local 520 in East St. Louis, and there were conflicts between those unions.

The evidence will show that as a matter of fact, as a matter of practice and policy, and as a procedure that has grown up over the years down in that district there in Madison County, in St. Clair county, and in fact all through Southern Illinois, in order to alleviate the constant problems which come up in the relationships between the laborers, that is the union men, the working men and the contractors, that the contractors have organized an association, that it is a nationwide sort of association. I think in Illinois it is called the Southern Illinois General Contractors Association. We believe the evidence will show

that clear back as far as the year 1947 and beyond
47 that but starting, for example, with the year 1947, because we think the evidence will show that is the contract involved here, the various labor unions, particularly in the building trades, entered into annual agreements with the general contractors association representing all of the contractors in that area in which terms of employment, wages, conditions of employment, the practices in connection with the various operations of the unions, all were set forth and agreed upon.

I think the evidence will show that clear back in 1947 and renewed from year to year thereafter, contract was entered into between the common laborers union 397 of Granite City and the Southern Illinois General Contractors Association, which contract at that time was approved by the War Labor Board, whose powers and authority were still in existence, defining—outlining the rights, duties and obligations and rates of pay, the working conditions between contractors operating in that area and the local union.

I believe that the evidence will show that, and that that contract will disclose that it was agreed that in the
48 case of certain operations the common laborers union were to furnish help, that is, help in connection with bricklayers, innumerable ones, and the contract will speak for itself, including, ladies and gentlemen, helpers or laborers when a piece of heavy equipment was used, such as was being used on the levee at the time that these two incidents occurred.

The evidence will show that the purpose of that provision in that contract was founded not in any unwanted or superfluous or unnecessary labor, but in the fact that these contracts—and we have got some of the contracts here and those will be offered to you in evidence—called for the rental by the Government from the contractors of

these enormous pieces of heavy equipment and operators at a high rate of pay per hour, and the Government paid that out; and that it was necessary, the evidence will show, that in connection with an economical operation of that kind of heavy equipment that they have a laborer on the job, a fellow who was constantly on his feet around the job, to hook heavy chains around stumps so that the heavy equipment could move it out, to move timber and brush
49 and stuff out of the way of the blades of the bulldozers as they moved along, to carry gasoline and water to the operator of the heavy equipment, all of that on the theory that if the operator had to stop his equipment and get off of the heavy piece of equipment and go and do it, that equipment would be sitting idle there perhaps for hours at a time, and the valuable time that the Government was having to pay for would be lost if they did not have these laborers to run these errands and to do the work.

But, ladies and gentlemen, the principal point is that the contracts recognized and operated under by contractors in this area—in the area down there that I speak of—have been recognized and operated under for years long prior to 1947, and by the evidence which will be presented to you, certainly since the year 1947.

Now that is the background of this situation. Mr. Alexander told you yesterday, and we agree with him—I don't think so far that Mr. Alexander and I are two words in dispute, or the United States Attorney, Mr. Stoddart.
50 We are going to disagree with him a little bit about the facts in this case. I don't know what evidence entirely they expect to present to you. They didn't tell me yesterday and they didn't tell you. They talked about an incident as charged in the indictment that occurred on the 26th of March and they talked about an incident as charged in the indictment that they say occurred on the 13th of April.

Some of the incidents that occurred on the 13th of April Mr. Alexander told you about, part of it he said. Well, I am going to let you hear yourselves as to what happened. I want to here tell you what we expect to prove about those two incidents and what I really believe the Government is going to prove, and that is all the Government is going to prove.

On the 26th of March, let me give you this one other little bit of background because it is interesting, it probably isn't pertinent to the case too much—when the Government started out on that $44,000,000 project down there north of Granite City and south of Wood River, Highway No. 66, a bypass of it sweeps down the hill from
51 Edwardsville and goes straight west and crosses the river at the Chain of Rocks bridge, and goes up around the hill and around Lambert Municipal Air Port and bypasses St. Louis, goes on south clear on to Los Angeles.

As it passes U. S. 61, which is about two or three miles east of the river and about a mile beyond that, the Government engineers as part of this great big project undertook to, and did, construct a great highway bridge right out in the middle of the corn fields. That highway bridge sat there for a couple of years.

They build the bridge first, and after they got the bridge built, then they came along and dug the canal under it, and the boats go up and down the river under the canal, now, so when there is talk in this case—and there will be a lot of talk about it—of the Chain of Rocks bridge or Chain of Rocks canal, what we are talking about, and I am sure what the Government will be talking about will be this bridge that was built out in the corn fields and the river put under it afterwards.

There will be in this case, and I say this also as an aside, because I think that Judge Adair will pass on it ultimately—I don't think it will be a question of fact

52 for you, but I might be a poor guesser—the question of interstate commerce we think arises in this case. There is no question in my mind, and I am sure in the mind of Mr. FitzGerald, that the canal which was built by these contractors under direction of the Government engineers by authority of the commerce of the United States, is a part of our inland waterway system and that commerce or traffic upon it is a part of the interstate commerce.

The incident with which we are concerned, the incidents about which we are concerned—we do not believe to have been such as involved interstate commerce. But that is just our belief. Actually, when they built these canals, Mr. Alexander said they pumped a great deal of sand there to construct the levees. Well, his information may be better than mine.

My information is that most of the dirt that went into those levees was dirt that was dragged out of the bottomlands, the corn fields where this levee cuts straight south, and thrown up on both sides and that made most of the levee.

I agree with his statement yesterday that the pur-
53 pose of those levees was to protect the fields, on either side from further inundation by flood waters. You folks up in Quincy are just as familiar with floods as we are down in Alton, we know the purpose of construction of levees.

Now the work was on the levee, and the work was on the levee right adjacent to south of the bridge that had been built in the corn field, the Chain of Rocks Bridge.

Mr. Wright, under the name of Midway Construction Company, had undertaken a contract, I think in the sum of some three thousand dollars, to do some repair and grading work on that levee.

I think the evidence will show in this case, and to this

point I am in agreement with my friend Alexander, that on the afternoon or the morning—anyhow, it was on the 23d of March, Jack Green driving by, and the evidence will show that he had a reason to drive by, that as business agent for that local under the rules and operations of this common laborers union, Local 397, has only a membership of 156 members in Granite City at that time. It is now down to 151, but Jack Green had under his supervision as business agent in that territory approxi-
54 mately 1200 men who were members of laborers locals from all over the area from as far south as a town called Moduc, I think, or down in Red Bud, from Belleville, from out east at Pocohontas and Sorrento, Illinois, out in Bonn County, and from Collinsville and East St. Louis, some 1200 men working not on the Wright job or not on the Terry job, but working on a number of little cut up jobs that had been distributed up and down the levee by the Corps of Engineers.

One of them the evidence will show was a job being handled by the Gordon Construction Company right across the canal from where our friend Wright was working.

The evidence will show that seeing Wright's equipment on the site, Jack Green got out and walked up to the operator of the equipment, who was an operator—a member of Local 520 at East St. Louis by the name of Frank Luhning, and that he said to him, "Whose equipment is this?"

And Luhning said, "Junior Wright's."

Now Mr. Alexander said yesterday that Green then said, "Have Junior Wright meet me here tomorrow morning," and that Jack didn't show up the next morning. That is the 24th or the 25th.

55 We think the evidence will show, and that it will be corroborated that what Jack said was, "Tell Junior

to get in touch with me. We think you need a laborer on this equipment."

The evidence will further show, we think, that Junior Wright did call Jack Green up on the phone and asked him what Green wanted, and that Green said to him, "Under the rules, under the contract with the General Contractors Association, you ought to have a laborer on that equipment there, it is the kind that needs it."

And that Junior said, "I'm not going to put one on it. I don't think we need it; and if you do anything about it, I will take it up to the National Labor Relations Board."

He may have said something else with reference to the FBI, but I don't recall that statement, and we will let that develop in the testimony.

The evidence will show that nothing more was done about the Wright job, that Luhning kept his time book, his minute book, he worked the 23d, the 24th, the 25th, and then on the 26th, a group of four or five laborers who had been working over on the other side of the levee came back over and said to him, "You need a laborer on
56 this equipment. Now will you do this for us? Will you—," in words to this effect—"stop operating this equipment until this matter can be worked out with the unions—two unions?"

And that Luhning, without any objection, said "Is it all right if I call headquarters?" Meaning Ralph Wright's office, the Midway Excavating Company's office.

And they said, "Sure."

That he moved his equipment down the side of the place where he was working, went in and called the office, and that the Superintendent who was there—I think he was a man named Marshall—the evidence will show said, "Well, just leave it there and come on in."

Now, as far as we are able to ascertain, ladies and gentlemen, that was the end of the Wright incident. That

is the incident which this indictment charges that this union and Jack Green by force and violence and threats of force and violence and by the crime of extortion interfered with Interstate Commerce. On the 26th of March—a man from Missouri—Wright is from Illinois, his offices
57 are in East St. Louis, Illinois, as will be shown on the Government contract—on the 26th of March on that same day at another spot on the levee, the Terry Excavating Company owned and operated, being simply a fictitious name under the Missouri Fictitious Name Act, actually owned and operated by A. W. Terry, had been operating for several months up and down the levee under a contract with the Government Engineers totaling around $4,000 to $4,400 to do the same sort of work.

Across the canal, within a few hundred yards of the site of the Terry job, the Gordon Construction Company, an Illinois corporation, a member, I believe, of the contractual group that had a contract with the laborers union, was doing similar work; and a group of laborers, none of whom I believe were members of Local 397, in either the Wright incident or the Terry incident, one or the other, the group was not composed of members of 397 but was of some other locals that were also working on that job up there, went across the river and said—there were two men operating two large pieces of equipment for the Terry Company. One of them was a lad named Ray Koesterer, and the other was a lad named Bill Fechte, both of them members of Local 520 of the operators union, and
58 this group of laborers went up to them and said, "Say, you should have a laborer on this equipment."

And they said, "It is a matter that should be straightened out between the unions. How about laying off the equipment until we get the matter straightened out between the two unions?"

One of them, I think, that was in the group who asked

him to lay off was a steward for the laborers union, a fellow on the job that under his contract and under the rules of the union is supposed to watch out to see that no other union encroaches on the work that his union is supposed to do—that is the practice—that is a contractual practice down in our part of the country where it is highly unionized, that neither of these fellows made any protest but parked the equipment to the side of the road and didn't go back to it, never did go back to the job. Fechte, I believe, had worked only a day, and I don't know how long Koesterer had worked.

Now the evidence will show, we think, ladies and gentlemen, that there was considerable rain and disagreeable and inclement weather between the 26th of March and the 13th of April—but our friend Terry hadn't been idle.

59 The evidence will show that Jack Green had gone to the Corps of Engineers and said to him, "Now you have got a contract with Terry out there on the levee. We think you ought—he ought to have a laborer on that job," and that the Engineer in charge said to him, "Well, that is a matter to be worked out between the contractor and your union," recognizing that there was a General Builders Association contract with the union and that those matters should be adjusted between them In other words, that the Corps of Engineers did not have anything to do with telling a contractor how many men he should use on a job, that that was a matter that should be determined under the terms of the contract between the Southern Illinois Builders Association and Local 397.

About the 11th of April—and I would ask you to remember that we believe that the evidence will show this, that Mr. Terry contacted a deputy sheriff in St. Louis, or St. Louis County, a gentleman by the name of Florence, who had been a former heavyweight wrestler, and told him that he wanted to hire him as a bodyguard; and the evi-

dence will show that he said he didn't only want one bodyguard, he wanted two bodyguards; that he had a gov-
60 ernment contract on the levee over at the Chain of Rocks Canal bridge, and that some goons had been threatening him and he just wanted to be protected.

The evidence will show that Mr. Florence contacted a friend of his who was also deputy sheriff, and I believe was a former heavyweight wrestler named Leo H. Zinn, and that Terry agreed to hire these men for the sum of $25 a day to bodyguard for him, to protect him against—I think the evidence will show he said four or five labor goons that we trying to cut in on his job over there.

I understand from Mr. Alexander that the two bodyguards will be presented in evidence here. If he does not offer them in evidence, we will, because I think their story is important in this case.

The evidence will show that after this, Friday or Saturday, because that was either the 10th or 11th of April when he hired these two bodyguards, that Mr. Terry then took them with him on a Sunday afternoon and drove across the bridge, up 66, up the hill to Evansville, Illinois, which is the county seat of Madison County; that he went to the county jail and he called the chief deputy sheriff,
61 Joe Kellermann, and asked him to come down and talk to him, and that Mr. Kellermann obligingly did; that they met on the steps outside the Court House in Evansville, Madison County Court House, and that he told Mr. Kellermann, Terry did, that he had a Government contract and that the Engineers were pressing him to get it finished, and that he was going to resume work there on Monday morning and he would like to have a deputy down on the job.

And Kellermann said, "Why, do you expect any trouble?"

And he said, "No, don't especially expect any trouble, but the laborers want me to put a man on the job."

But that Kellermann then went into the sheriff's office and called his deputy in Granite City, which is the closest deputy location to the job, a fellow by the name of Jack, and asked him to go up to the job early the next morning and just be on the site in case any trouble came up.

The evidence, we think, will show, ladies and gentlemen, that on the morning of Monday, April 13, the day this thing is supposed to have happened, or did happen,
62 that at union headquarters in Granite City, the headquarters of Local 397 where all of these laborers assemble, either each morning for new jobs or come in and report when their jobs are finished and they are assigned out to new jobs, that Charlie Parker, who was the financial secretary and keeps the records there at the office, got a phone call, and that the person who made the phone call asked for Jack Green; and he told him that Jack Green wasn't there.

"Well," he said, "give him this message. This is Terry calling. I want you to tell him that we are going up on the levee and going back to work up there this morning."

That Parker thought no more of it than to just make a note of it and put it on Jack Green's desk, and when Jack Green came in about fifteen minutes later he observed the note and did nothing about it, but that some short time afterwards took off by himself in his own car to go up to see what was happening up on the levee job up there.

That Green found up on the levee that Mr. Terry was there in his car with his two bodyguards parked up on the levee; that working down on what they called the
63 berm of the levee, which is the lower shelf that gives it its foundation, was a piece of equipment operated by another operator out of Local 520 in East St. Louis, and I will tell you about him, so I don't forget.

The operator of that piece of equipment was a man by the name of Voyles. He is from Belleville. He is a gentleman with some years on him, and he was what is called a "permit man" out in Local 520. Mr. Voyles, I believe, will testify, and I think the evidence will show that Ralph Wright, Sr., now let's not give the Wrights mixed up—Ralph Wright, Sr., was the business agent for Local 520 in East St. Louis. He was also the father of Ralph Wright, Jr., who was one of the two complaining witnesses here, that Wright, Sr. had called Mr. Voyles on the morning in question and told him he had a job for him and that Voyles reported by the union headquarters in East St. Louis and was assigned to the job up there for the Terry Construction Company, or the Terry Excavating Company, whichever the name of it was, and that Wright, Sr. said to him at that time, "Now there may be some labor trouble up there. If there is, you have been at this business a long time, you have got a good level
64 head on your shoulders, and we don't want any trouble."

Voyles was operating the piece of heavy equipment when Green went there.

Green also saw the deputy sheriff up there, and he turned around and went back to his headquarters.

Either before or after he had gone back to his headquarters, and the timing on this thing is something that only the witnesses can straighten out, he got a second call. The second call was made to the union headquarters by Mr. Terry, and this time Terry talked to Jack Green, told him who he was and said to him, "I'm working up here on the levee. Are you going to come up and do anything about it?"

And Green told him in simple words, "You bet your life I am."

Now whether that was before the first trip that Green made up there or the second, I don't know.

In the meanwhile, the evidence will show that somehow or other the word had gotten out that not only was Mr. Terry himself armed, but that both of the bodyguards up on this levee job carried firearms.

The evidence will show that that word spread through the Granite City area like wildfire. As Mr. Alexander
65 told you yesterday, there were union laborers, members of Local 397 and members of a great many other laborers locals working in various industries and plants around Granite City as well as the great number of them that were working up on the levee job; that that word spreading around by the grapevine, spread around like wildfire, so that around ten or ten-fifteen in the morning men were pulling out of their jobs at the Dow Chemical Company specifically, where a number of them were employed, the Granite City Steel Company where a number of them were employed, and that they got in their cars and left their jobs. Some of them went directly up to the levee site. Some of them stopped at the union headquarters.

The evidence will show, and I digress a minute because this involves another phase of this situation, that sometime early that morning Frickert, learning that Terry had come over there with some armed bodyguards, had called the sheriff's office and told Joe Kellermann, his deputy, "This thing looks like it might be getting bigger than I can handle—one man can handle. You had better send some more deputies down here."

66 And the evidence will show that Kellermann immediately called his Edwardsville deputy, George Muso, who is an enormous fellow, used to be the captain and tackle for the Chicago Bears, and a deputy in Alton named Rip Turner—Paul Turner, and told them to go down there,

and that as soon as Sheriff Callihan came in a few minutes after nine, he and Kellermann went down to the site; that when they got down there, the men from these various labor locals, and a great many men who were not attached to any local, spectators, had begun to arrive at the site of this job; that the sheriff, I believe the evidence will show, that the sheriff went up, or that Frickert went up and said to Terry, "What is the trouble?"

And that Terry said, "Well, we have got a government contract here, and the laborers want us to put a laborer on the job."

And Frickert said to him, "Well, isn't that customary?"

And that Terry said, "Yes, it is customary over here, but it is not customary where I come from, and I'm going to make a test case out of this."

The evidence will show that the sheriff got there
67 before Jack Green got there and I am confident the evidence will show, ladies and gentlemen, that Jack Green—that when Jack Green got there, there was several hundred men who already had gotten up there that had just come either directly from the plants or that had flooded out of the labor headquarters where they had been sitting and waiting for assignments for work that day; and that Jack Green came there and came striding up the levee, that the sheriff went down to him and that Jack said, "I'm glad you are here, Sheriff."

And that the sheriff said, "What's the trouble?"

And that Jack Green explained to him that the laborers had asked him to put a man on the equipment.

The evidence will show that constantly throughout all of these proceedings, which by many and competent witnesses will be shown, that Green had constantly warned his men and had constantly said, "We want no trouble on this job," and that he went back up there following his men,

so that if there was any possibility of trouble he would do what he could to stop it.

68 And the evidence will show, ladies and gentlemen, we are confident, that the sheriff said to him, "Well, this looks like a jurisdictional proposition to me, labor dispute to be settled between your two unions or in the courts."

"Will it be all right if Terry and his men go back across the river?"

And Green said, "I didn't ask him over here, and I'm not going to tell him to go back. It's all right with me if they want to go back, but if they do go back, you will have to tell them to. I'm not going to tell them to."

He had no right—I'm not going to argue that—he just simply told the sheriff that and the sheriff went up to Terry and told him, "This looks like a jurisdictional matter that should be straightened out between the two unions or in the courts, and why don't you take your men and go back to St. Louis?"

And that Terry, if the information I have this morning is right, and we are going to offer it into evidence, Terry and Green shook hands and Terry went back across the river.

Now, that is the incident, ladies and gentlemen, which
69 Mr. Alexander characterized yesterday as the principal item, the whole item, the whole nut of the so-called "criminal lawsuit".

I might suggest to you in conclusion, and then I am going to leave this case to the witnesses and to you people, that you will find in the evidence and you will hear in the evidence, and the evidence will be presented to you that there is an arrangement in the contract with the Contractors Association, and also in the agreement between the various trades that belong to the American Federation of Labor Building Trades Council that when a situa-

tion like this comes up, they have agreed to and provided for under the terms of that contract—

Mr. Alexander: We object, your Honor. This is argument, because there is no contract between the parties to this.

Mr. O'Neill: I withdraw the statement.

The Court: He withdraws it.

Mr. O'Neill: The evidence will be presented, ladies and gentlemen, for your own consideration.

But I just want to say this in conclusion: That we think there will be no evidence presented in this case wherein a single threat was made to anybody. We are sure there will be no evidence presented to—

70 Mr. Alexander: If the Court please, that is argument. He is telling us what the evidence won't be now.

The Court: Yes, I think that perhaps is a little improper, what it won't be. You don't know in regard to that.

Mr. Alexander: I can't tell about that.

The Court: Yes, you know what your side has.

Mr. O'Neill: I will say, your Honor, and I can put it affirmatively, I think, that the evidence for the defendants will show that no demands for money or demand for money was ever made on the plaintiff, that not one cent of money or extortion—not one cent of robbery was ever received from Wright, Jr. or from Terry by these defendants, and the evidence will show that rather than precipitate—

Mr. Alexander: If the Court please, this is not stating what conversations were, what occurred.

The Court: You didn't either, neither one of you did.

Mr. Stoddart: Nobody objected, your Honor, to us.

The Court: Go ahead. Just don't argue.

Mr. O'Neill: I am not trying to make an argument, your Honor.

71 The evidence will show, ladies and gentlemen, that rather than precipitate any extortion or any threats of force or violence or any use of violence, that constantly through these days and incidents the defendant Jack Green told his men, "We want no trouble," and on the occasion of the 13th of April told his men to leave the site of that job and go back to work.

In conclusion, let me tell you what the evidence will show: That the Terry Construction Company job was finished for the Government Engineers; that Terry's subcontract—that Terry subcontracted that job to the Gorham Construction Company within a short time afterwards; that he had $1122.00 coming on the job; that the Gorham Company took part of Terry's equipment and finished the job, and used laborers in connection with that equipment; and when they got through, they had $22.00 left out of their costs on the thing which was turned over to Terry.

That, ladies and gentlemen, we expect will be the case for the defendant.

We ask you to keep in mind that the indictment and the law, as Mr. Alexander and I both have
72 presented to you, contemplate robbery, contemplate the crimes of robbery, or extortion or force and violence, and that you won't find any of that in this case.

Thank you.

The Court: Call the witness.

73 And Thereupon the Government, to Maintain the Issues in its Behalf, Offered and Introduced the Following Evidence, To-Wit:

LT. COL. FRANK ARTHUR GLEASON, JR., a witness called in behalf of the Plaintiff herein, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Alexander.

Q. What is your name, please?

A. Lt. Col. Frank Arthur Gleason, Jr.

Q. Where do you live, Colonel?

A. I live in St. Louis at the present time, a place called Richmond Heights.

Q. How long have you lived in St. Louis?

A. A little over two years.

Q. To what branch of the Army are you assigned?

A. I am with the Corps of Engineers.

Q. How long have you been in the military service?

A. I have been in the Corps of Engineers and in the United States Army a little over twelve years.

74 Q. Are you at the present time assigned to any particular work in the vicinity of St. Louis?

A. I am in the St. Louis District of the Corps of Engineers. I am the Executive Officer in that organization.

Q. Approximately what territory does that district comprise?

A. Our district is responsible for the main branch of the Mississippi River for rivers and harbors which extend from Cairo to just below Hannibal and about eighty miles up the Illinois River and the water shed which embraces that territory, except the Missouri, we have no responsibility on the Missouri, that is the Kansas City District.

Q. Now are you familiar with the work which the Corps of Engineers has carried on in the Mississippi Valley generally for a great number of years?

A. Yes, sir, I am.

Q. As an artery of commerce, will you describe the Mississippi River?

Mr. FitzGerald: It is conceded, and it is a matter of common knowledge, of which the court takes notice,
75 that the Mississippi River is a part of the interstate traffic and is engaged in interstate commerce.

The Court: Is that the only purpose?

Mr. Alexander: That is the only purpose, going into the interstate feature of this case.

The Court: I think we can take judicial knowledge of that.

By Mr. Alexander:

Q. Now, Colonel, in so far as navigation is concerned, what, say, over the past thirty years has been the purpose of the Government with respect to the channel of the Mississippi River?

Mr. FitzGerald: If the Court please, I don't see any purpose in this case in that.

Mr. Alexander: I think it will be known. Read the question, if you will, please.

(Question read.)

Mr. FitzGerald: If the Court please, the purpose is apparent to everyone, that so far as all matters of transportation which deal with interstate commerce are concerned, that there have always been efforts to make
76 them better and improve them.

It seems to me that it is unnecessary to spend the time of the court.

The Court: I think it can be answered very shortly. It couldn't be any very lengthy answer to that.

You may answer, Colonel.

The Witness: The Corps of Engineers, it is an agency of the Federal Government, and has been responsible for providing—for improving the Mississippi River as a navigable waterway, providing a channel nine feet deep and 300 feet wide from the mouth of the Mississippi River up to about Alton, and 9 feet deep and 200 feet wide from Alton

up to Minneapolis, and on up the Illinois River to Chicago.

Q. For how many years has that work been under way, the 9-foot channel is what I have in mind.

A. The 9-foot channel project has been under way since the latter part—early part of 1930 up to the present time.

Q. Now Colonel, are you familiar with the Chain of Rocks Canal?

A. I am.

77 Q. That project, does it have anything to do with the 9-foot channel?

A. It does.

Q. Of the Mississippi River.

A. Yes.

Q. Will you explain the purpose of the canal and the necessity of it?

A. I will. In the vicinity of St. Louis, about opposite the St. Louis water works, there is a series of rock ledges which jut out from the Missouri shore which are called the Chain of Rocks. These rock ledges for a number of years have been a serious hazard to navigation, especially during periods of low flow in the river.

In our canalization project, which I mentioned started somewhere in the early 1930's, they constructed some 26 locks and dams to provide lifts from St. Louis to Minneapolis.

However, this Chain of Rocks reach—no particular dam could have been provided in that area, and in the study of the problem of how to bypass this chain of rocks, it was determined after a great deal of study to provide a canal which

78 is generally along the Illinois shore, in Madison County on the edge of Madison County, about eight miles long; and this canal, it has a lock—two locks at the lower end, one is 1200 feet by 110 feet wide, and one is 600 feet by 100 feet wide, which permits us to by pass this

chain of rocks reach in the main part of the Mississippi River.

I think that is it generally.

Q. I think that covers it.

Mr. FitzGerald: That is the biggest lock in the world, 1200-foot one, is it not?

The Witness: That is, at the present time, it is the biggest surface area—the biggest surface area lock of any in the world that we know of.

(Whereupon a document was marked Government's Exhibit 1 for identification.)

By Mr. Alexander: Q. Will you look, Colonel, at Government's Exhibit 1 and state if you can what it is?

A. State what—I don't get it.

Q. State what it is.

A. This is a map showing the canal—location of the canal in reference to the Mississippi River. It shows the property limits of the canal of that property
79 which is owned by the Federal Government, and it also shows the area where this altercation took place about which I think this whole case is revolving about at the present time.

Q. Now can you state whether or not the entire length of the levee is in Madison County, Illinois?

A. It is in Madison County, Illinois.

Q. Now Colonel, I notice that a certain portion of this plat or map is colored green.

Will you tell us what that part is?

A. That is on the east side, it represents both the east embankment of the canal and also the east levee. It is one and the same thing.

And on the west side, the green line represents the west embankment and the west levee, one and the same thing.

Q. This levee, Colonel, of what was it constructed?

A. Of what was it constructed?

Q. Yes. Where were the materials obtained from?

A. The material to construct his levee was dredged from the canal providing the canal which you see on that map.

Q. What would you say that material was, the general nature of it?

80 A. It was sand and silt which had been deposited by—over the years in that area.

Q. Now are you able to state, Colonel, whether the green portion that is covered, is that intended to cover the entire area, or is that just a portion of the levee?

A. That is just a general idea of the location of the levee to show you the—

Q. General line that it follows?

A. General alignment, that would be a way to express it.

Q. Well now, there is here, I notice, that the green line is in each case between two brown lines, or rather—

A. I understand what you mean.

Q. You understand those lines?

A. Yes.

Q. What are those lines?

A. The green lines show the levee alignment, and the brown lines on either side of that green line represent the area in which these contractors were working at the time that this situation took place.

Q. At the natural ground level, can you tell us what 81 is the width of the levee?

A. Is it about, I would estimate that as about 150 to 200 feet wide at the base.

Q. Now what do they call that part of a levee (indicating)?

A. Well, that is berm on either side at the base.

Q. Is that a berm?

A. At the base and the berms.

Q. How far up do you go before you come to the end of the berm?

A. Well, it is just the change in the slope. The berm is a flat place which is provided at the base of the levee to further stabilize it, and then you have the slope of the levee, and then the top of the levee.

Q. In other words, it is a gradual slope up at the berm, and then a more acute slope as you go up?

A. As you come from the canal, there is a slope provided from the canal to the berm; and then there is a wide berm in this place to further stabilize that base, and then the levee slops up again to the top of the levee, which is about 20 feet wide at the crown.

Q. And the crown to which you refer is the top?

82 A. The top of the levee, which is 20 feet wide and covered with rock—crushed rock.

Q. Is there a roadway on the top of the levee?

A. There is a roadway.

Q. What does the red line on this plat indicate?

A. The red line represents the limits of ownership of the Government property in that area.

Q. That is where the Government has its right-of-way?

A. We bought that land, that is correct, from the land owners in that area in order to permit the construction of this canal.

Q. And on both banks of the canal, the east and west banks, there is a levee?

A. That is correct.

Q. Now are those two levees of the same height?

A. The bank of the west side is about 5 feet higher than the bank on the east side, except below the locks where they are at the same elevation.

Q. Why is that different?

A. There are about five feet higher on the east bank because when this was constructed it was decided at that

time to give—to improve the protection for the east side —flood protection for the east side drainage and levee
83 district—Sanitary District; and we built that levee over there to protect East St. Louis against a flood of 52 feet of the St. Louis gauge, which is quite some distance higher than any flood of record.

Q. Is the land generally east of that levee in its natural state subject to flooding by the Mississippi River?

A. Yes, it is. It is flood plain of the Mississippi River.

Q. Are you familiar with the industrial development in those cities in St. Clair County and Madison County that are protected by this same levee?

A. I am familiar somewhat with the industry over there.

Q. Can you state the nature of some of the enterprises that have been conducted there during the past four or five years?

A. There is the Granite City Steel Company, which is a big steel mill.

Q. Is that company engaged in interstate commerce, do you know?

A. To the best of my knowledge, it was.

Mr. O'Neill: I don't know what that question was.

84 Mr. Alexander: Whether or not Granite City Steel Company engaged in interstate commerce.

Mr. O'Neill: Object to that.

Mr. FitzGerald: I do too. The apparent purpose of counsel is to show there are many industries on each side of the Mississippi River that do manufacture articles where they are engaged in interstate commerce. There was always a levee there to protect them.

The Court: He has answered.

Mr. FitzGerald: I am objecting upon the ground it cannot be used for the purpose of determining that any-

thing is applicable to this case, could be involved in the question that is being asked.

The Court: I think the objection will be overruled. It may stand.

Go ahead.

By Mr. Alexander: Q. Can you name others?

A. There is the Granite City Engineer Depot which is located behind that levee, which is the largest engineering supply installation in the country.

85 Q. And that is a part, that is a defense project?

A. That is an organization which is charged with the responsibility of receiving, storing and issuing Government property for the Army and some for the Air Force and Navy.

Q. Would you say how wide in the United States the distribution of the materials stored and held there is conducted?

A. It may be shipped anywhere in the United States to any military installation, and also overseas.

Q. And that has been operating there for approximately how many years?

A. It has been operating for about, I believe it was built by the St. Louis District during World War II, and it has been operating somewhere in the neighborhood of ten to twelve years.

Q. Are there a great many other industrial and manufacturing plants located in the area protected by this levee?

A. To my best knowledge, there are. There is the Dow Chemical, which has a magnesium plant over there, and A. O. Smith just recently.

Q. But in connection with what industry is magnesium used, can you tell us? If you don't know—

86 A. I do know somewhat, but I think it is beyond my province to explain that. I think it is used in

the chemical industry; it is used in the manufacture of light weight appliances; it is used in a great number of operations today. Magnesium is becoming more valuable all the time as a useful product.

Q. Does that plant produce magnesium or—

A. It does not, no, just processes magnesium ingots, I believe, that are transported into the plant.

Q. And after being processed, do you know whether the distribution of the resulting product involves the use of channels of interstate commerce?

A. I do not know that.

Q. You don't know?

A. I do not know the answer.

Q. When was the project of the canal started, do you know, Colonel?

A. Yes, I do. The project was started in the early part of 1946 when a Government dredge made the first pilot cut at the lower end of the canal so that the contractor could come in there and begin construction of the locks.

Q. Now, has it been completed?

A. Not yet. It is for all intents and purposes prac-
87 tically completed, but we are still doing some work down at the lower end of the canal. The contractor is working at the present time at the lower end of the canal installing a spur dike to prevent excessive siltation at the lower mouth of the canal.

Q. Is the canal open for commerce?

A. The canal is open and has been open since February, 1953, the 9th of February.

Q. Since that date, could you give the court and jury any idea of the tonnage that has gone through the canal?

Mr. FitzGerald: If the Court please, I object to that question as wholly irrelevant to any issue in this case.

The Court: The tonnage that has gone through the

canal from each one of these particular parties that he has mentioned, or the general tonnage?

Mr. Alexander: No, just generally what the operations of this canal have meant to commerce on the Mississippi River from States other than the State of Illinois.

The Court: Yes, from States other than the State
88 of Illinois, he may answer that.

The Witness: Yes, we averaged during the summer of 1953 about a million tons a month that went through the canal, and it has been continuing and increasing, and this year up to about June or July we have been averaging a little over a million tons per month passing through the canal.

By Mr. Alexander: Q: That tonnage is carried how?

A. It is carried in towboats—pushed by—carried in big barges, pushed by towboats, highly-powered tugboats—towboats.

Q. Well, do you mean those chains of towboats which we see going up and down?

Q. You would see them going up and down the river, big steel barges loaded with coal, loaded with sulphur, loaded with many different types of commodities, wheat, gasoline, diesel oil, big barges, and they are pushed by these towboats.

Q. Is there such traffic both up and down the Mississippi River and through the canal? In other words, does it go both ways?

A. It is up the canal and down the canal. We thought at first that these navigation operators would use the open river during periods of high water for down-
89 stream traffic, but that hasn't materialized. They use the canal for upstream and downstream almost 100 percent.

Q. Colonel, in connection with this canal and levee, is there a maintenance problem?

A. Yes, there is.

Q. Will you explain to the court and jury how the surface of a levee of that nature is finished to make it provide the best protection from floods?

A. After a levee is constructed in the rough, then we try to establish on the surface of the levee a firm sod; and then down at the very edge of the canal where it would be subject to wave wash, we have placed slag so that it would withstand any erosion.

Now we want a good sod established on the levee, and once we have it established, why, we are pretty satisfied with maintaining that sod over the years. Roots get in there and hold the soil in place, but until that is done it is very subject to erosion.

On the Chain of Rocks levee that is particularly—by the very nature of the material of which it was constructed, it is extremely subject to erosion until you get a good sod; and in this particular area we have had a considerable amount of erosion take place and have had to do a lot of repair work in getting that back and getting those rivulets and those deep ruts filled in, and grass planted in there, and then watch it very carefully just to make sure that we get a good grass cover. If we don't, we have to get back and do it again until we do get a grass cover.

Q. Where you have not yet obtained a firm sodding, and erosion starts, what would you feel the result would be if action is not taken as promptly as possible?

A Well, I think that if we don't repair these rivulets and this deep erosion that has taken place in the levee, comes high water, we will have a failure.

Q. What do you mean by a failure?

A. I mean the levee will collapse.

Q. When erosion once starts in a small way, what is the nature of the progress of the erosion?

A. Once it starts, then if we have any type of rainfall at all, why it then will proceed at a very rapid rate.

91 Q. Progressively more rapid as time passes?

A. I could say that that is a certainty.

Q. If you have a levee that has been eroded to a rather substantial extent, and a flood came, is there immediate danger of collapse of the levee?

A. Well, now, the way you put that is a difficult thing to answer. It depends on how deep the erosion is, the motion of the water; but certainly any of these bad cracks which have been developed by erosion in the levee are all danger points and we are very much concerned about those type of deficiencies on a levee prior to a flood.

Q. If there was a failure of the levee, what would be the effect on the canal?

A. Well, we feel that if that levee failed, we would get a blockage in the canal and could hinder—could really stop the flow of traffic until we got a dredge in there and got it repaired.

Q. Is the levee considered to be an essential part of the entire canal project?

A. It is.

Q. Colonel, in connection with your duties did you become familiar with two maintenance contracts for the levee? I think one known as No. 45—Engineers 4554

92 between the Corps of Engineers and Mr. Terry, and one with another number between the Corps of Engineers of the United States and a Mr. Wright?

A. I was.

Mr. O'Neill: 4219.

Mr. Alexander: 4219. Is it satisfactory if we use a photostat of that contract?

Mr. FitzGerald: Sure.

Mr. O'Neill: If it is all right with the boss here.

Mr. Alexander: Supposing we use your photostat. I don't believe we got a photostat.

(Whereupon said documents were marked as Government's Exhibits 2 and 3 for identification, respectively.)

By Mr. Alexander: Q. Colonel, will you look at this photostat marked Government's Exhibit 2 for identification and state whether that is a copy of the contract between Mr. Terry and the Corps of Engineers?

A. This is Terry's contract.

Q. That is the Terry one?

93 A. Yes.

Q. Will you look at Government's Exhibit 3 and state if that is a copy of the Wright contract?

Mr. O'Neill: We will agree, but it isn't the Midway Excavating Company.

Mr. Alexander: Midway Excavating?

Mr. O'Neill: That is Wright contract really.

By Mr. Alexander: Q. The Midway Excavating?

A. This is the contract with Midway Excavating.

The Court: They are photostatic copies, are they not?

The Witness: Yes.

Mr. FitzGerald: No objection to the photostatic copies.

Mr. Alexander: That is by stipulation.

The Court: Is there any objection?

Mr. FitzGerald: No.

Mr. Alexander: By stipulation we can use the photostats.

Mr. FitzGerald: Will you write on those things so they are plainly identified?

Mr. Alexander: We will write on this white part.

Your Honor, I would like to have a few moments
94 to get this plat up on an easel where the jury can see it because we want to identify certain particular places. It won't take but a couple of minutes.

The Court: We will take a ten-minute recess. You may pass into the jury room, if you will.

Court will be at recess for ten minutes.

(Whereupon a recess was had.)

The Court: You may proceed, gentlemen.

By Mr. Alexander: Q. Colonel, will you step over to the plat, Government's Exhibit 1 for identification, if you will just step around here, please, and I will ask you whether or not there is a bridge crossing this canal.

A. There is, the Chain of Rocks canal bridge.

Q. Can you show us where that is?

A. Right here (indicating), right in here. This is where the bridge is, the bridge is right in this vicinity (indicating).

Q. Well now, suppose we just run a line out here and mark that "Bridge".

95 And is that commonly called the Chain of Rocks Bridge?

A. It is the canal bridge, the Chain of Rocks bridge is over here across the Mississippi River, right here (indicating).

Mr. FitzGerald: Marks, I wish you would step back so all of the jurors can get a look at it.

Mr. Alexander: I will try to keep out of the way.

Q. Now I notice along this line of the canal a number of letters and figures in parenthesis, for instance, A-78, A-76.

What do those mean?

A. Well, these just represent the index as a coding to tie in with various properties that were owned, and we referred to those when we were in our acquisition program of this land.

Q. Now on plats of this nature you generally have stations marked as in some way or other?

A. That is right.

Q. Are they shown here?

A. Yes.

Q. Are the stations shown?

96 A. The only stations that are marked on here that I can see are stations which define the limits of the work.

Q. Well, of these two contracts?

A. That is right.

Q. Well, take Contract 4219.

A. You will have to tell me the name, the number is not as familiar as the name.

Q. Well, it is the Midway Excavating Company.

A. Midway Excavating Company was working within these limits (indicating). We have it marked down there I believe it is 248 on the east bank up to 423, and then they had a small piece in 449 to 453, and then a smaller parcel from 474 to 488, and that is on the east bank, and also a section 2, it is 284 up to 349.

Q. Now the figures which you give are the stations?

A. Station numbers, that is correct. It was 100 feet, there are 100 feet to a station.

Q. Well now, can you give us the station covered by this particular contract which marks the extreme southern end of that work?

A. Is this still the same contract?

Q. This is the same contract.

97 Mr. FitzGerald: Terry?

Mr. Alexander: This is Midway.

The Witness: Midway. This is 248 on the east bank.

Q. Just one moment, please. Suppose we run a line out here and mark that "Southern limit Midway Contract."

Now can you point out the northern limit of the work under this same contract?

A. Up here (indicating), 488. There were three little sections in there.

Q. I understand there are a few little intervals where there was no work required.

A. That is right.

Q. We will mark that "Midway Contract Northern Limit".

Do I understand that some of the work under this same contract, between those limits, was to be carried on both on the east levee and on the west levee?

A. That is correct.

Mr. FitzGerald: How long will you be on the direct with the Colonel?

Mr. Alexander: Not much longer.

Q. Now let's take the other contract, the Terry 98 contract, Exhibit No. 2, and the Midway contract, Exhibit 3.

What is the northern limit of the Terry contract?

A. Northern limit is 512 right up here at the very end where it starts to go up to Cahokia Creek diversion canal, where it begins to go up the Cahokia diversion channel levee I am speaking of.

Q. That is the northern limit of the Terry contract, Exhibit 2.

Now, then, what was the southern limit of the Terry contract?

A. 239, Station 239, right there on the west bank, 239 on the east bank, on the east bank it is 239 and off the west bank it is 239.

Q. Now do I understand that these two contracts covered the same area?

A. In part of it they were intermingled, as you can see.

Q. I see each one had certain spaces in those limits.

A. Well, it is the way these types of contracts are handled. They are called "equipment-rental contracts" where we rent equipment and men, where we ask the

contractor to furnish all of the equipment and men,
99 and we do the supervision, so it is very likely that you can have two contractors working in the same general area.

Q. Now that southern limit, will you give me it again, for the Terry contract?

A. 239.

Mr. FitzGerald: Well, that is the same, isn't it? Is it the Midway?

A. Not exactly. The other is 248 for Midway.

By Mr. Alexander: Q. Is the station shown there—there is the bridge—is the station shown where the bridge crosses?

A. I do not see it on the map.

Mr. Alexander: Colonel, you might get back on the witness stand.

The Witness: Thank you.

By Mr. Alexander: Q. Colonel, prior to the making of these contracts, had the levees proper on the east and west side been substantially completed?

A. We had finished the sections of the levee, and we had done our planting, seeding and planting, and the grass had grown for the most part throughout the levee system.

Q. This erosion had occurred on those sections
100 where the sod had not taken hold?

A. Correct, that is right. When I came into the district in 1952, that was finished and sodded and the grass was growing at that time; I remember on my initial inspection trip in early July there were some at the upper end, they were just finishing planting, they were finishing in that area. We had some trouble, and they had just finished planting that and it was seeded at that time.

Q. Now just what kind of work did the contractors contemplate?

A. The contracts contemplated that these contractors

would furnish the equipment, dozers, and high lifts of that type to fill in these rivulets with material, with earth, and to smooth them over and plant seed.

Q. Did it include the planting, if you know?

A. I'm not sure of the planting of the seed.

Q. The contract would show?

A. I think we would plant the seed in that with our own forces because it was of such a small nature.

Q. That is my understanding then.

A. That is right, just the equipment.

Q. Just the equipment and the operating of that 101 equipment?

A. The job itself, the overall job that we were doing there was to repair that erosion in the levee, and then after it is repaired, we would plant seed therein.

We hired the equipment, and—

Q. And the operators of the equipment?

A. And the operators to fill in these cracks, smooth them over and tamp them down, and get them ready for seeding.

Mr. Alexander: I believe that is all at this time.

The Court: Cross-examine.

Cross-Examination by Mr. FitzGerald.

Q. Colonel, this plat which has been marked as Government's Exhibit 1, was that prepared at the request of the District Attorney's office?

A. Yes, it was.

Q. For the purpose of showing certain things?

A. It was for showing the extent of where the work was located.

Q. And that is involved in this case?

102 A. That is right.

Q. Has anyone from the District Attorney's office conferred with the person who was drafting the plat?

A. Not to my knowledge.

Q. Now on this levee, were you there when the levee was built, or had it been constructed when you came into this work?

A. It was essentially constructed when I arrived in the district.

Q. So that you personally did not observe the character of the soil at the points where the Midway and the Terry people were doing their work on the levee?

A. I am familiar with the soil—character of the soil along that whole reach, and it is the alluvial valley of the Mississippi, silt and sand.

Q. What was the gradient on the levee proper?

A. Sir?

Q. What was the gradient on the levee?

A. It was about 1 on 4 slope there.

Q. Wasn't it on 1 on 3?

A. 1 on 4, I believe.

Q. Are you certain about that?

A. No, I am not.

103 Q. In severe flood areas is a gradient of 1 in 3 usually the one?

A. What is that, sir?

Q. I say, in severe flood areas, a grading of 1 and 3 on levees is not an uncommon grading, is it?

A. No, it isn't.

Q. That is one of the—

A. It is not uncommon, but where we have a little bit more difficult soil conditions, we will put on a 1 on 4.

Q. Now at the point where these levees were constructed, let's take—well, the drawing has gone away, but anyway, on the east side of this drawing, the left-hand side, as I recall it, is it north, isn't it on the plat?

A. North, that is right.

Q. Your left, so that the east side on the Illinois side would be at the top of it?

A. That is correct.

Q. The levee on that side is constructed higher than on the other side?

A. Yes, sir.

Q. That is because of the lowlands there and you want more elevated land on the west side, isn't that
104 true, or on the Missouri side?

A. No.

Q. This is all Illinois?

A. It is all in Illinois. The purpose of the construction of the levee on the east side being higher than that on the west side is because of the additional flood control protection that we desired to give the east side area, Granite City, Madison, East St. Louis at that time.

Q. Yes, there weren't any industries or anything of that sort, no particular farming between the river and the canal, were there, in the area where the canal bridge was built?

A. Would you state that question again, sir?

Q. Were there any industries on that strip of ground between the river proper, the old Chain of Rocks area and the canal?

A. No, sir.

Q. Just south of the canal bridge?

A. Mostly—for the most part, farming country. I don't know of any industry at all there.

Q. And the farming country was sparse in there, was it not?

A. I wouldn't say; it was heavily cultivated, it still
105 is today.

Q. It was heavily cultivated?

A. It was and it is.

Q. Was the same necessity for protecting that farm land as there was the farm land and industry on the east side?

A. We protected—we provided protection for that land, but not the same protection.

Q. In other words, you did build a 5-foot higher levee on the east side than on the west side?

A. That is right, except downstream of the lock.

Q. Well, I am talking of the area now that is in question in this case.

A. Yes, sir.

Q. That was the fact there, was it not?

A. Yes, that is right.

Q. Now, therefore, upon the levee on the east side was a construction necessary for the purpose of protecting the persons who had interest, whether they were farming, retail stores, individuals living in houses, industry or whatnot on the east side, by the greater height of the levee, is that right?

A. It had a dual responsibility, of course.

106 Q. Yes, I understand that. Now that levee on there had always been a levee up on the east side, had there not prior to the construction of the canal?

A. When that levee was constructed over there on the east side, I'm not certain, but my knowledge—and I have seen that levee—it was a very low level of protection for the East St. Louis area prior to this construction.

Q. Well, I am talking about the Granite City area where all of this occurred. It didn't occur down so far south as the East St. Louis area, did it? The instances that are involved in this case?

A. Oh, no, we are talking about in the vicinity of the Chain of—of the canal bridge.

Q. That is right. Well now, was it at that time of the low type you have explained?

A. Prior to the construction of the canal?

Q. Yes, that had existed there, which was put in there by the levee district, whatever its proper name was.

A. That is right, low level of protection prior to the construction of this levee.

Q. Do you know how long that had been there?

A. No, sir, I do not.

107 Q. Do you know of any floods that had occurred there in a period of several years prior to the time when the canal levee began to be constructed?

A. No, sir.

Mr. Alexander: To which we object as immaterial, if the Court please.

The Court: He has answered.

The Witness: I do know the greatest flood of record we have had is 1844 flood which completely wiped out—they had a flood of 1902 in that area, and that is the most recent flood that I know of.

By Mr. FitzGerald: Q. And since 1902 then you know of no flood that at any time was of sufficient height to get over the levee that was then maintained by the Sanitary District?

Mr. Alexander: To which we object as improper.

The Witness: I don't have that knowledge, but I will say that there was probably—they would probably have been overtopped this 1902, but I don't have that information. But I could find that information for the court if necessary, as to how often the east side has been

108 flooded, and I think I can furnish that very rapidly, if necessary.

Q. You do not have that information?

A. I don't have it at this time.

Mr. FitzGerald: Did you say something, your Honor?

The Court: No, I didn't.

Mr. FitzGerald: I thought you were going to tell me to stop and we would eat.

The Witness: (Continuing.) But I can furnish that if you want it.

The Court: No.

Mr. FitzGerald: Well, I don't know whether we will want it or not. We have witnesses who can furnish it.

Q. In your job as the Chief Engineer and Executive Officer in charge of the Engineering Corps in the St. Louis area, did you personally supervise the work that was being done under these two contracts, Government's Exhibits 1 and 2—I mean Government's Exhibits 2 and 3?

A. I did not.

Q. Who did that, Colonel?

A. Personnel Supervisor is done by Mr. Staley in our office, and then we have an inspector on the job 109 who is actually out there supervising to see that the Government gets what they ask for.

Q. But you did not personally?

A. If you mean personally, you mean on the spot, don't you?

Q. That is right, on the spot, and you were not there on either of the two days that have been mentioned in this matter, March 26th or April 13th?

A. I was not.

Q. Now during all of the time that you were there, which I understand began in February of 1952.

A. No, sir.

Q. Didn't you come there in February?

A. I came in July of 1952.

Q. Oh, I beg your pardon, I thought you said you hadn't come there—

A. No. I said the canal opened to traffic on February, 1953.

Q. Do you know when the Midway people first came in?

A. You mean came to the office?

Q. No, came to work under this contract.

A. When did they first start their work?

Q. Yes.

A. In the early—during March of that year.

110 Q. That is 1953?

A. 1953—March of 1953.

Q. You were there in 1952?

A. Yes, I was.

Q. Did I ask you about Midway or about Terry?

A. You asked me about Midway.

Q. Midway, you don't know when they started to work?

A. About March, I would say, of that year.

Q. Of 1953?

A. That is right.

Q. Do you know when Mr. Terry started work?

A. No, I am not exactly sure of the exact dates of when they started.

Q. Or approximately?

A. In March or April, around there. Terry was a little—I think he was after Midway, if I am not mistaken.

Q. Well, now, during all of the time from the time of the canal's opening for traffic in February of 1952 and the time that Terry and Midway came in, that traffic had gone through exact places where they were working in April and March 1953, is that right?

A. We are talking about—you mentioned traffic 111 started February of 1952?

Q. Yes, sir.

A. I would like to correct you. In February of 1953. February, 1953, is when the first traffic went through the canal.

Q. Oh. Well, all right, from the time from February 9, 1953, I misunderstood you so excuse me, please—From February 9, 1953, the traffic started, and that traffic was passing the places where the Midway and Terry people were working, from the time the canal was opened to traffic in February of 1953?

A. That is correct.

Q. Now all along that levee up and down for some

distance on each side of the work that was being done by Midway and by Terry, there were others working on the levee, rip-rapping, things of that sort below the berm, were they not?

A. That is right.

Q. How far south did that work continue, did it go down to the south end of the canal of the levee?

A. Which work?

Q. The work on the levee east.

A. The other contractors and other people would be doing—

112 Q. Yes, anyone was doing work?

A. They were working from one end to the other, that is right.

Q. Yes. During the time that the Midway was doing work on there, was any of that work they were doing when stopped sufficient to have caused any interruption in the passage of traffic through the canal?

A. At that time?

Q. Yes, sir, at that time.

Mr. Alexander: To which we object as immaterial.

The Court: Objection is overruled. He may answer.

The Witness: That work did not stop the traffic at that time.

By Mr. FitzGerald:

Q. Was any of the work now—that was the Midway, as I recall, when I asked about the work at the Midway being done, the Midway work was stopped for a certain period of time, was it?

A. That is right.

Q. And during the period when no work was being done by the Midway, that traffic went through the canal un-

113 interruptedly as it approached and left the canal?

A. That is correct.

Q. During the time that the Terry work occurred, from

the time it first began until it was finished, whether finished by Terry or someone whom he had subcontracted completion of the work he had contracted to do, was there ever any stoppage or interruption in the passage through the canal because of the fact that the Terry work was interrupted or stopped?

A. No, there was not.

Q. Did the canal in so far as the movement of traffic or ships or barges through the canal at any time—were they caused any delay because of that stoppage of work?

A. They were not.

Q. Was there any delay caused by anything that happened during the time that Terry worked or the time the Midway worked, from the first time they went on the canal until the work covered by their contracts was completed, by reason of any incident that happened upon the levee, in the traffic through the canal?

A. No, there was not.

114 The Court: I think we will stop at this point. I see you have another line to take.

Mr. FitzGerald: Yes, I have another line I wanted to pursue.

The Court: So ladies and gentlemen, be back promptly in your room at two o'clock.

You may be excused.

Court will stand adjourned until two o'clock this afternoon, may be recessed until then.

(Whereupon these proceedings in the above-entitled case were recessed until 2:00 o'clock p.m. of this same date.)

115 Court reconvened in the above-entitled cause at the hour of 2:00 o'clock p.m., September 15, 1954, pursuant to recess.

Present: Same as before, to-wit:

Mr. Alexander, Mr. Oxtoby, and Mr. Stoddart, appearing on behalf of the Government;

Mr. O'Neill and Mr. FitzGerald, appearing on behalf of the defendants.

116 LT. COL. FRANK ARTHUR GLEASON, JR., a witness heretofore called on behalf of the Government, and having been heretofore first duly sworn, resumed the stand and further testified as follows:

Cross-Examination (Continued) by Mr. FitzGerald.

The Court: You may proceed.

(Whereupon documents were respectively marked Defendants' Exhibits 1, 1-A and 2 for identification.)

By Mr. FitzGerald: Q. Would you look at the photographs which I am handing you, which I have had for purposes of identification marked Defendants' Exhibits 1, 1-A, and 1-A is a continuance of the same picture, those roads adjoining, it adjoins that road at the side, and I will ask you—

A. Oh, I see what you mean.

Q. You see what I mean?

A. Yes.

Q. I ask you if you are familiar with the conditions that existed there in the neighborhood of the bridge over the canal along in the months of March and April of 1953.

117 A. Yes, sir.

Q. Those pictures correctly represent the conditions existing on the top of that levee and down to the east

side of the levee running down to the public road there to the east of the levee?

A. Well, you can't see the condition of the levee from these pictures.

Q. No, but do they represent the general environmental situation?

A. It is the area in question, but it doesn't portray the conditions of the levee.

Q. No, I am not offering them for the purpose of showing the particular condition of the levee, but merely the levee, this road.

A. That shows the top of the levee, I think that is looking north.

Q. It is looking north, yes, sir.

A. I think that is looking north, and we are looking—this is the top of the levee, and then there is a road that goes down there off on the back, and there is our straw mulch which we have for the repair of the levee, you notice the big piles of straw (indicating).

Q. Will you just explain that to the jury, while you 118 were talking you were looking at the picture, and the jury of course could not see just what you saw.

Mr. Alexander: Just a moment. We object to exhibiting the pictures at this time.

The Court: Yes, objection sustained.

Mr. Alexander: We have no objection to their identifying them.

Mr. Alexander: All right.

Q. Do they correctly represent the environmental situation existing there at that time?

A. They represent the location, but I don't think they represent the condition of the levee.

Q. No, you have said that. I am not talking—

A. If you are asking if that is the levee—if we are look-

ing north, if that is the bridge and if that is the road that is there, then my answer is yes.

Q. Now then, on the Exhibit 1-A, the road that is shown running towards the bridge is what?

A. This road here? (Indicating.)

Q. Yes.

A. The top of the levee.

Q. Now, Colonel, will you look at the Defendants' Exhibit 2, and I ask you if you can identify that picture.

119 If it will help you, I will tell you what it is supposed to portray—

Mr. Alexander: Well, that would be scarcely the witness identifying it if you have to tell him what it is.

Mr. FitzGerald: Just the location of the camera.

The Witness: Well, it looks to me like it is a view to the south in the same general vicinity as this other picture.

By Mr. FitzGerald:

Q. That is right, so far as the view to the south is concerned—

A. There has been some—it looks like there has been some material placed on the top of it or some spilled off a truck, I'm not sure exactly what.

Q. But that is the same road, only—

A. It looks like that on—

Q. On the top of the levee?

A. There has been some disturbance in the soil there.

Q. And that was true along in the months of March and April, 1953, generally of the road itself, was it not?

A. I think it generally portrays the road, yes.

Mr. FitzGerald: That is all I care to ask the

120 Colonel.

Mr. Alexander: May I see the exhibits, please?

Mr. FitzGerald: Surely.

(Whereupon said exhibits were handed to Mr. Alexander.)

Redirect Examination by Mr. Alexander.

Q. Now, Colonel, as I understand it, taking Defendants' Exhibit 1 for identification, is that the bridge that you located on the map?

A. That is the canal bridge.

Q. And the roadway, is that the roadway on top of the levee?

A. That is correct.

Q. Now I notice a growth of some kind, a growth off the road on that picture (indicating), is that the kind of growth that you tried to get on the levee side?

A. Not exactly. It is part of the sod we are trying to establish, but some of that has to be cut down; and as you notice, there is some other kind of grass besides grass in there—some other type of growth.

121 Q. In other words, it is weedy?

A. It has to be cut out and taken out and reseeded.

Q. On this picture do you see any signs of the erosion about which you spoke?

A. No. I mentioned that to Mr. FitzGerald that the only—the reason you cannot see that is because this is a low, oblique, and you are looking into the grass and you would have to take—this erosion, as I recall it, was taking place all along on both sides—you would have to get on top of it or adjacent to it because looking at this flat angle you cannot see any of that. The erosion takes place perpendicular to the top of the levee and not along parallel to the top of the levee.

Q. Now I notice on that same picture, there is a side road apparently. Do you know where that goes?

A. Yes. There is a road that goes down off the levee in that general vicinity. We call that an "access road." We would call it an "access road" to the top of the levee; rather than driving up over the sod, why, we like to have

a road to get our vehicles up on it and also to do work in time of flood.

Q. The road that is shown there, is that on the east
122 side of the canal or the west side?

A. That looks like the east side. In fact, I am fairly certain that is the east side of the levee, looking north.

Q. In your examination by Mr. FitzGerald you spoke of a 1 to 4 slope. Can you tell from this picture what the slope is on the banks of this levee, the reverse bank?

A. It looks to be about between 1 to 4 and 1 to 3. I would just like to clarify that point which Mr. FitzGerald asked.

Q. I wish you would.

A. When we have bad soil conditions, why, we would probably build on a 1 to 4 or even a flatter slope, and if we had good soil where we come into 1 to 3 and sometimes even less, but we usually design on a 1 to 3, and in poor soil conditions it is 1 to 4 so you will find up and down this levee, if you went along and surveyed it and tried to check what the slope was after you constructed it, part of it is 1 to 4 and part is 1 to 3.

Q. And where the soil was not of the best materials, you would make it 1 to 4?

A. That is right. For example, up there.

123 Q. And that means 1 foot of rise to each horizonal 3 foot or 4 foot?

A. That is right.

Mr. FitzGerald: What would you call that, 20 percent grade, or 33⅓ percent?

By Mr. Alexander:

Q. Do you know what percentage grade that is?

A. All you have to do is divide 1 over 4 and you have a 25 percent grade.

Q. Now taking Exhibit 2, are you able to tell from just what point that picture was taken, Defendants' Exhibit 2?

A. Well, with reference to that picture, it is—oh, it is taken, well, about in that point there. It looked to me it would be about 50 to 100 feet up from the intersection of that access road.

Q. In other words, the man with the camera placed himself somewhere between the access road and the bridge proper?

A. That is right.

Q. And then took another picture facing in the same way?

A. Just turned around and took a picture facing in the opposite direction.

Q. In the opposite direction?

124 A. That is right.

Q. Which of these would be the access road?

A. Coming up on the levee.

Q. The one on the right?

A. Coming up to the levee, this is the top, from the top of the levee looking down (indicating).

Q. And is this the same kind of growth that you described on the other picture?

A. Well, right in here is a little better grass than over there (indicating). You see there, what you are asking me about that, you see just opposite that was just caught in the picture. Here we got a little better situation right there, that is not too bad (indicating).

Q. That is on the left of the picture?

A. That is not too bad.

Q. Down here on the right of the picture you have these bushy clumps?

A. That is right.

Q. That you take out?

A. Yes. You see in this vicinity here, whereas this

other picture you drive up here, Exhibit 1, I don't believe you can go underneath, you have to go around, you drop down and come back on the levee further on down; but you don't, as I recall, you don't go right underneath the bridge there because the lower parts are too close to the top of the levee.

Q. In other words, that particular section of the road isn't generally used?

A. It is used, of course it is; but I don't think you will find it too rough. I think you will find it continuing with the other side.

Q. Now look at Exhibit 1-A.

A. That is coming down and also down on the lower—at the—almost at the foot of the levee. The levee is over on your left here (indicating). You have some—I believe this is a club house people used to have over here years ago when there were sloughs, you see, in the center of the area, that is what those homes are that you see.

Q. Then there is currently a barn there, a house?

A. A farm is over there too on the other side of that, you will see a farm that was over there back in this area, a farm, clubhouse, and there is an—there is a radio club in that vicinity, and so forth.

Q. Well, that section where these buildings are, is that to the east of the levee?

A. East.

Q. So that is looking north on 1-A?

A. That is right. It seems to me now, I could—

Q. I see you are just doing the best you can.

A. But that is as I recall, being in that vicinity a number of times, as I see it.

Q. This is the same access road as on Exhibit 1?

A. You see, these are overlapped, you see that straw pile?

Q. Yes.

A. They match up there.

Mr. FitzGerald: That is Defendants' Exhibits 1-A and 1?

Mr. Alexander: 1 and 1-A.

The Witness: You see, that is how they match up. It shows the slope of the levee, the road at the base, and then the road on top of the levee in that area. You wouldn't find a road at the base of a levee all the way along.

By Mr. Alexander:

Q. Well, on this Exhibit 1-A, the general nature of the topography there is apparently a little different, it is rather rolling. Is the levee of the same character?

127 A. No. There you got to put these together to see that. Now there is the levee and then to the east of that, right there is the foot of the levee, and the levee curves along like that and follows parallel. This road turns in here (indicating).

Q. That road turns to the left there?

A. Yes, it doesn't keep going straight.

Q. And the levee turns?

A. The levee is going straight. It is just the way the pictures are taken. They should be matched up. The levee is, for all intents and purposes, straight ahead in that area.

Mr. FitzGerald: May I see those a minute when you are finished, please?

(Whereupon some documents were marked Defendants' Exhibit 3 for identification.)

Mr. Alexander: Just a moment, I had not finished.

Mr. FitzGerald: Beg your pardon. I thought you had finished.

Mr. Alexander: I finished with that particular phase.

Mr. FitzGerald: I want to have him identify 128 it.

Mr. Alexander: If you want to have him identify one additional item, I have no objection to the interruption.

Cross-Examination (Continued) by Mr. FitzGerald.

Q. Colonel, I wish you would look at the photograph I have identified as Defendants' Exhibit 3 for identification, and ask you if what seems to be level ground, or approximately level ground near the water on the east side of the canal is what you refer to as the berm.

A. That would be the river side berm.

Q. Yes.

A. There is a land side, and the river side. The river side is in the canal.

Q. Well, the land side would be over on the opposite side of the levee?

A. That is right; that is correct.

Q. Yes. In other words, it is that level space on each side of the levee, one next to the water.

A. The levee comes down and then we have a flat berm.

Q. That is right. That is shown by the picture in 129 so far as the general location is concerned as to its conditions approximately the same as it was in these months of March and April of 1953?

A. In so far as that picture was taken, I think that that is a good portrayal, but as I mentioned before, and I think it should be understood that that picture, the photograph does not represent the condition of the levee because the grass growing up around there does not portray this erosion that was taking place.

Q. I understand.

A. And I could not tell you from that picture that you showed me right there as to whether the work had been done when that was taken or it hadn't been done.

Mr. FitzGerald: I do not want the picture for the purpose of determining anything about the condition of the levee or of the berms.

What I did want was to get the general environmental situation visually before us.

The Witness: I think that that portrays the area where this work was going on, and as I understood, the alter-
130 cation took place—I was not there when it happened.

Mr. FitzGerald: No. I understand.

Redirect Examination (Continued) by Mr. Alexander.

Q. Now will you look again at Exhibit 1 and then take Defendants' Exhibit 3, which counsel has just had you identify, and explain the relationship between those two pictures?

A. Well, it looks to me like there has been some work done since these pictures were taken. It looks like they weren't taken together, or this picture— yes, I would say—

Q. Are the two pictures of approximately the same area?

A. Yes, they are, backed up a little more. This one is backed up a little bit more.

Q. On which one?

A. On this picture.

Q. That would be Defendants' Exhibit 3?

A. Yes, sir. Yes, sir, it looks like it is backed up— he has backed up quite a bit. In fact, he is a little further down the levee, about—oh, it looks to me about maybe 250, 300 feet.

131 Q. I noticed on Defendants' Exhibit 3 for identification a post. Does that appear on Defendants' Exhibit 1?

A. No. I think that would be behind him when this picture was taken.

Q. When Defendants' Exhibit 1 was taken, the post was behind him, you think?

A. Yes, I think so.

You see, just by the amount of area that is taken in over here, you see.

Q. Well, the turn in the canal is shown by both pictures, and the bridge in both pictures.

A. Yes. This one looks like he is closer up, but— take that back.

Q. By "this one," you are referring to Defendants' Exhibit 3?

A. Yes. I would say this one is the further one back, he just had his camera turned at a wider angle.

Q. At a different angle. Well, on Defendants' Exhibit 3, which would be the levee road and which would be the access road?

A. That is the levee road, and that is the access road (indicating).

Q. Now the levee road is the one that appears on 132 the left center?

A. That is correct.

Q. Of the photograph, and the access road on the right center?

A. Right.

Q. And over on the access road there appears to be some kind of a building, isn't that correct?

A. That is right.

Q. Can you tell whether those would be the same buildings that are shown— or one of the same buildings shown in Defendants' Exhibit 1-A?

A. Yes, I think if you match this up you can see that. Now if you put this— you see this road—

Q. There you have it.

A. You see, this is coming back on the levee, see this road is coming back on top of the levee here, very close; this is the access road coming up. If you back up a little piece, you will find it in this road, this is this road (indicating).

Mr. FitzGerald: Of course the jury isn't getting any of that. It seems to me we are just wasting time.

Mr. Alexander: I want to find out about it.

Mr. FitzGerald: I didn't ask the questions.

133 You are asking them.

The Court: Let's get along.

Mr. FitzGerald: What is this marked as?

Mr. Alexander: I am going to make it Government's Exhibit 4.

Mr. FitzGerald: What one is that?

The Clerk of the Court: Defendants' Exhibit 1.

Mr. O'Neill: Defendants' Exhibit 1 is now also Government's Exhibit 4.

The Court: Can't we let the record show that Government's Exhibit No. 4 is identical with Defendants' Exhibit No. 1?

Mr. FitzGerald: It should show that.

The Court: Let the record show that. All right, go ahead.

Mr. Alexander: Then we will have Defendants' Exhibit 1-A marked as Government's Exhibit 5.

The Court: It may be so marked.

(Whereupon a document was so marked.)

Mr. O'Neill: Why don't you mark it 4-A? I will just make this—

Mr. Alexander: I will do that.

Mr. O'Neill: They fit together.

134 The Court: Just so we get started here is all I want. You can mark it any way you wish.

The Clerk: Government's Exhibit 4-A for identification purposes.

(Whereupon the document was so marked.)

Mr. Alexander: Now Defendants' Exhibit 2 we will ask to be marked as Government's Exhibit 5.

The Court: It may be so marked.

The Clerk of the Court: Government's Exhibit 5 for identification purposes.

Mr. Alexander: Now Defendants' Exhibit 3 we will ask to be marked as Government's Exhibit 6 for identification.

The Court: If there is no objection, it may be so marked.

Mr. FitzGerald: No objection.

The Clerk of the Court: Government's Exhibit 6 for identification purposes.

(Whereupon the document was so marked.)

The Court: Is there anything else of this witness?

Mr. Alexander: I have a few more questions on re-
135 direct, your Honor.

The Court: All right, proceed.

Redirect Examination by Mr. Alexander.

Q. Colonel, in identifying the plat and the various points on the plat you indicated that these two contracts about which you testified overlapped territorially.

Can you explain just how you operated with respect to those contracts?

A. These were what we call "rental-equipment contracts", where we take a rent out—rent equipment with men and materials, and we do the supervising so that—we do this type of contracting so we can take advantage of small operators with two dozers and a couple of trucks, and that might be all they had, rather than a big company who wouldn't be interested maybe in that kind of work. It gives us a broader competition.

Well, this equipment is brought on the job and we have our own supervisors who say, "Now look, Joe, you dig out this ditch in such and such a way, and then fill it up
and smooth it off in such and such a way, and then we
136 will move up to another spot," and he might take this dozer, so it is quite possible we can have, as happened in this particular case, two contractors who could be working in exactly the same area.

Q. Colonel, in describing the nature of the levee and where you obtained the material for the levee, I neglected

to ask you how you finished off the top of the levee, with what material, what did you use?

A. As I mentioned earlier, for the most part the levee was constructed from this dredged material out of the canal.

Now, in order to provide a top soil, as we call it, for the grass, why, we did borrow material from—land-wise on the east of the levee, and brought that on—covered the levee for a depth of about a foot with a material which is—we call "top soil", but you wouldn't recognize it as such for your garden because it is a sandy and silt material with home humus mixed up with it, brought by the farming—brought about by the farming that had been going on in that area or just plain weeds growing over the years and decaying.

137 Q. In other words, it is better material to obtain a growth than you get—

A. Well, it has got some organic material in it that holds together a little bit better than sand and silt, that is right.

Q. That is, than you get from the interior of the canal?

A. Yes.

Q. When erosion starts on the banks of a levee, from the standpoint of economy for the one who is under obligation to maintain it, is it best to get as prompt action as you possibly can?

A. Yes. We desire to keep that erosion down to a minimum, so we can be ready at all times in case of high water or flood; and of course, it costs a lot more money the longer we let that thing go.

Q. With respect to periods of the year when we have our greatest rainfall, is it best to obtain that work, to have that work accomplished before those periods of heavy rainfall?

A. Yes.

Mr. Alexander: If the Court please, we will offer Government's Exhibits 4, 4-A, 5, 6 in connection with the
138 testimony of the witness.

The Court: Also they are Defendants' Exhibits what?

Mr. FitzGerald: I would like to have the Government numbers identified with those of the identification numbers of the defendants so there will be no question about it.

The Court: Just so that our record is straight.

Mr. Alexander: I will.

Government's Exhibit 4 is the same as Defendants' Exhibit 1;

Government's Exhibit 4-A is the same as Defendants' Exhibit 1-A;

Government's Exhibit 5 is the same as Defendants' Exhibit 2; and

Government's Exhibit 6 is the same as Defendants' Exhibit 3.

The Court: Is there any objection?

Mr. FitzGerald: No objection.

Mr. Alexander: There is no objection.

The Court: It may be admitted.

(Whereupon said documents were received into evidence.)

139 Mr. Alexander: We would like to have the jury examine them while we proceed, if the Court please.

The Court: Are you through with this witness?

Mr. Alexander: I think so.

Mr. FitzGerald: Do you have anything further?

Mr. Alexander: I don't think so.

The Court: Do you have anything further, counsel?

The Court: Call the next witness.

Mr. FitzGerald: Nothing further.

You may be excused.

Mr. Alexander: You may depart under the conditions we talked about.

Mr. FitzGerald: What do you mean, "conditions"?

Mr. Alexander: That is a little secret between the Colonel and me.

140 CHARLES R. PARKER, called as a witness on behalf of the plaintiff herein, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Alexander.

Q. Will you state your name?

A. Charles R. Parker.

Q. Where do you live, Mr. Parker?

A. 2313 Hodge Avenue, Granite City, Illinois.

Q. What is your occupation?

A. Financial secretary of the International Hod Carriers Laborers, Local 397, financial secretary.

Q. Local No. 397 of which you speak is one of the defendants in this case, is it not?

A. That is right.

Mr. FitzGerald: Speak so the reporter and all of us can get it, please, Charlie.

The Witness: Yes, sir.

By Mr. Alexander: Q. Did you, in response to a subpoena of this court, produce certain records?

A. Yes, sir.

Q. Of the union?

141 A. Yes, sir.

(Whereupon some documents were marked Government's Exhibit 7 for identification.)

By Mr. Alexander: Q. Mr. Parker, I will show you Government's Exhibit 7 and ask you whether or not this book, or rather, whether this book contained the constitu-

tion of Local 397 which was in effect in the years 1952 and a portion of the first six months of 1953.

A. That is the book put out for all laborer locals by the International Union.

Q. And your local has adopted the model constitution?

A. Yes, sir, it is for all those labor locals.

Q. For all locals in the International Union?

A. Yes, sir.

Q. And the local constitution is contained in pages 2 up to 25, following this blue sheet, separating sheet, is it not?

A. Yes, that is the constitution of local unions.

Mr. O'Neill: What pages did you say?

Mr. Alexander: 2 to 25.

Mr. O'Neill: Is there any difference between the orange and the green ones?

142 The green is the latest one.

By Mr. Alexander: Q. That is 1950?

A. That green book, sir, was adopted at the International Convention of 1953 in October.

Mr. FitzGerald: What is the date that it was adopted?

Mr. Alexander: October 15, 1951.

Mr. FitzGerald: It remained in effect until October, 1953, isn't that right?

Mr. Alexander: Right.

If the Court please, we would like to offer into evidence Article VI of this local constitution appearing on pages 9 and 10 thereof.

The Court: Are you gentlemen familiar with the particular article?

Mr. FitzGerald: Let me see if it is the same as the one I have.

Mr. O'Neill: Article VI, the business representative.

Mr. Alexander: You are looking at the wrong part.

Mr. O'Neill: The back part?

143 Mr. FitzGerald: Yes.

(Whereupon the document was marked Government's Exhibit No. 8 for identification.)

The Court: You may proceed, Mr. Alexander, and we will pass on them all at the same time in order to save time here, if we can.

Mr. FitzGerald: Are you able to read back the question he asked about their Exhibit 7?

Mr. Alexander: What was the question?

The Court: Otherwise, have you any objection to that?

Mr. FitzGerald: I would like to check it. Go ahead with the witness.

Mr. O'Neill: What did you identify as Exhibit 8, please?

Mr. Alexander: I have not identified it as yet.

Q. I will hand you Government's Exhibit 8 and ask you whether you recognize that, Mr. Parker?

A. Yes, sir.

Q. Is that an agreement between your local and the Southern Illinois Builders Association?

144 A. That is right.

Q. That was originally drawn up and executed by the parties in January of 1947, was it not?

A. Yes, sir.

Q. And continues in effect up to the present time, except for certain amendments having to do solely with changes in rates of pay?

A. Yes, sir.

Q. Isn't that true?

A. Yes, sir.

Q. Otherwise, the agreement remains in effect?

A. Yes, sir.

Mr. O'Neill: That is the same thing.

The Court: Are you offering that, Mr. Alexander?

Mr. Alexander: Not at this time, if your Honor please.

The Court: I just thought that we would save time. Go ahead with this witness.

Mr. FitzGerald: No objection to Government's Exhibit 8, the portion of it offered.

The Court: Government's Exhibit what?

Mr. FitzGerald: Government's Exhibit 7.

The Court: There is no objection to the portion
145 offered by the Government's counsel, Government's Exhibit 7, that portion will be admitted as to Government's Exhibit 7 by consent.

All right, go ahead.

(Whereupon said portion of GOVERNMENT'S EXHIBIT 7 was received into evidence.)

The Court: All right, go ahead.

Mr. FitzGerald: Being pages 9 and 10 of Article VI; is that right?

Mr. Alexander: That is right, just Article VI.

The Court: All right, let's get along with this.

Mr. Alexander: If the Court please, we would like to have this Article read to the jury.

The Court: Can't you finish with this witness first?

Mr. Alexander: I can finish first.

The Court: I am just trying to get along.

Mr. Alexander: I am simply trying to get these records identified, your Honor. This is the only one that we are going to offer at this time.

146 (Whereupon a document was marked Government's Exhibits 9 and 10 for identification.)

By Mr. Alexander: Q. What are Government's Exhibits 9 and 10?

A. Those are the minute books of Local 397, 1952 and 1953 is what the Government wanted.

Q. Both the years 1952 and 1953 are included therein?

A. Yes, sir, they are in these minute books right here.

(Whereupon a document was marked Government's Exhibit No. 11 for identification.)

By Mr. Alexander: Q. What is Government's Exhibit No. 11?

A. This is the official ledger of Local 397. In other words, it is a roll call of members of Local 397 during the years of 1952 and 1953.

Q. And it contains all of the members?

A. Of Local 397, yes, sir.

Q. Would that include men who were working under what are known as "work permits"?

A. Under working dues—no, sir, that is not under
147 working dues, that is just active members of Local 397.

Q. Now you have also produced here, have you not, the records showing the collection of dues from all men who had workers' permits and worked under the jurisdiction of your local union?

A. Yes, sir. I brought the stubs for the working dues for 1952 and 1953 that the Government requested.

Mr. Alexander: May it be agreed that if it should become neeessary to produce any of those, that they will be available without further identification?

Mr. O'Neill: Yes, sir.

Mr. Alexander: I don't know that it will be necessary. We might want to use some of those.

The Court: If you want it, all right.

Mr. Alexander: I don't think it is part of a record, your Honor. I just wanted to know if we could have an understanding.

Mr. O'Neill: What you asked for, Mr. Alexander, was if any of these records were needed by you, that you decided that you wanted to use them in evidence, that we would produce them at any time.

148 Mr. FitzGerald: Any of them.

Mr. Alexander: Any of these in the files.

Mr. FitzGerald: Yes, any of them, you may have those.

The Court: Is there anything further of this witness?

Mr. O'Neill: Your Honor, may I say this with reference to Exhibits 8 to 11?

The Court: Is there an offer of these last exhibits?

Mr. Alexander: No, your Honor, we are in no position to offer them as yet.

The Court: Is that all with this witness?

Mr. Alexander: No, your Honor. There is one other exhibit that I want to have the witness identify.

(Whereupon a document was marked Government's Exhibit No. 12 for identification.)

By Mr. Alexander: Q. Will you look at Government's Exhibit No. 12 and state what that is, Mr. Parker?

A. This is the roster of the officers of Local 397 for the years 1952 and 1953 as requested by the Govern-
149 ment along—they asked for some stewards, and to the best of my knowledge, this is the list that I could give you, I mean on the stewards board.

Q. In other words, it contains a list of the—

A. Of the officers.

Q. —of the officers during the whole of the year 1953?

A. 1952 and 1953, sir.

Q. 1952 and 1953?

A. Yes, sir.

Q. The names of the members of the executive board?

A. Yes, sir.

Q. The names of the trustees during that same period, and then in addition, a list of the five stewards—five of the stewards, is that correct?

A. That is correct.

Q. But you don't know that that is a complete list of what is known as shop stewards?

A. No, sir. I wouldn't know about the shop stewards, but that is the complete list of our officers.

Q. Now I notice on the list—

Mr. FitzGerald: Wait. He hasn't finished. Had you finished your answer?

The Witness: Yes, sir. I said that was our com-
150 plete list of officers for 1952 and 1953.

Mr. Alexander: Officers, is it the complete list of stewards?

A. Well, I wouldn't know, sir.

Q. That is what I mean, you don't know.

A. No, sir, not on the steward part, I wouldn't know.

Q. But you know the men named here were shop stewards?

A. That is the ones I remember, yes, sir. I mean I had such short notice on that.

Q. Yes. I notice that the name Lloyd Skeen is given as vice president, and Lloyd Skeen is also given as steward at Austin Company job.

A. Yes.

Q. Now that is one man, is it not?

A. Yes, sir.

Q. He occupies both of those positions?

A. Yes, sir.

Mr. FitzGerald: What is that Exhibit 12?

Mr. Alexander: We will offer Exhibit 12.

The Court: Is there any objection?

Mr. FitzGerald: No objection.

The Court: It may be admitted.

(Whereupon said document was received into evidence as GOVERNMENT'S EXHIBIT 12.)

151 Mr. Alexander: That is all.

The Court: Cross-examine.

Mr. FitzGerald: No questions.

The Court: You may read your exhibit, if you desire to do so.

That is all for you, I think, Mr. Witness.

Is that all of this witness?

Mr. FitzGerald: We may want to use you.

Mr. Stoddart: Pardon me?

The Court: I think he didn't hear you.

Mr. FitzGerald: He will probably be a witness.

The Court: Do you still want to retain him—when the man testifies in court, do you still want to keep the same rule, if he is a witness for them that he must remain outside?

Mr. FitzGerald: I don't see any occasion for that.

Mr. Alexander: Yes, if he is going to be a witness for the defense, I think he should be excluded.

The Court: Remain outside then until you are
152 called.

Mr. O'Neill: May we state this, if the Government is through with him, that this man has some official duties.

The Court: He can go when he wants to.

You are only subject to call by these gentlemen, that is our understanding, isn't that correct?

Mr. FitzGerald: That is correct.

The Court: You are through with him?

Mr. Alexander: Yes.

The Court: It is up to Mr. FitzGerald and Mr. O'Neill, then.

(Witness excused.)

The Court: You may read.

Mr. Oxtoby: I am reading from pages 9 and 10 of Government's Exhibit No. 7, entitled:

"Article VI, Business Representative.

"The business representative shall be the recognized representative of the local union to the employers and the general public—and the public generally. He shall keep informed of all work within the same juris-
153 diction of the local and report to the local. He shall

appoint and supervise stewards and shall generally be charged with the duty of working conditions observed by the employer as well as by members of the union—of the local. He shall at least once a week turn over to the financial secretary all moneys collected by him with a detailed statement thereof and obtain a receipt therefor.

"Although he is not to be considered an officer, nevertheless all provisions relating to the qualifications and performance of duties of officers are applicable to him. He shall either be elected or he may at the option of the local be appointed by the executive board; if to be elected, then all provisions relative to election of officers shall be applicable to him. He shall give a bond for the faithful performance of his duties in such sum as shall be fixed by the local and the premium of which shall be paid by the local."

154 That is Article VI, pages 9 and 10 of Government's Exhibit 7.

The Court: Call the next witness.

(Witness excused.)

155 FRANK PHILIP LUHNING, called as a witness on behalf of the plaintiff, having first been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Oxtoby.

Q. Will you state your full name, please?
A. Frank Philip Luhning.
Q. Is that spelled L-u-h-n-i-n-g?
A. That is right.
Q. Where do you live?
A. Collinsville, Illinois.
Q. What is your business or occupation?
A. I am an operating engineer.

Q. What are the duties of an operating engineer?

A. Operating a bulldozer, pushing the dirt.

Q. Do you belong to a labor union?

A. No, I work on permit out of Local 520.

Q. Speak up, and speak a little bit more slowly so the last member of the jury can hear you.

What is your union?

A. I work on a permit out of Local 520, operating engineers, 520.

156 Q. Is that out of East St. Louis?

A. That is right.

Q. Do you know the defendant in this case, Jack Green?

A. Not personally, no.

Q. Do you know who he is?

A. Yes, sir.

Q. Do you see him in the court room?

A. It is Mr. Green over there (indicating).

Q. Indicating the man at the far table?

A. That is right.

Q. With the green tie?

A. Yes.

Q. Did you have occasion, Mr. Luhning, to see the defendant Jack Green on or about March 23, 1953?

A. Yes, I did.

Q. Where?

A. Down in Chain of Rocks locks.

Q. About what time of day?

A. It was in the afternoon on the 23d.

Q. What were you doing out there?

A. I was operating a bulldozer.

Q. A bulldozer?

A. That is right, B-6 bulldozer.

Q. For whom?

157 A. Midway Excavating Company.

Q. Who is the president of the Midway Excavating Company?

A. Ralph Wright, Jr.

Q. In other words, he was your employer that day, is that right?

A. That is right.

Q. What kind of work were you doing on the levee?

A. I was filling washouts on the berms of the levee.

Q. Do you happen to know who the work was being done for?

A. Corps of Engineers.

Q. United States Army?

A. That is right.

Q. And it was while you were working that you saw the defendant Jack Green, is that correct?

A. On the 23d, yes, sir.

Q. Did you have a conversation with the defendant at that time and place?

A. I did.

Q. What was said by you and what was said by him, if anything?

A. He walked over to introduce himself and wanted to know where my laborer was.

158 I told him I didn't have one.

Q. Where your who was?

A. The laborer, the swamper for the rig, the laborer.

Q. What did you say?

A. I told him I didn't have one.

Q. What did he say?

A. He told me for me to have my boss contact him that night and be on the levee on the following day, on the 24th.

Q. What happened next, if anything?

A. What is that?

Q. What happened next, if anything?

A. Well, I went on and continued working, finished the day and then that evening I informed my boss of what he told me to tell him.

Q. By your boss, you mean—

A. Ralph Wright, Jr.

Q. Directing your attention to the next day, March 24, 1953, did you work on the levee that day?

A. I did.

Q. And continuing your same work with your caterpillar?

A. Yes, sir. I had moved—hooked onto a scoop. I was with a cat and a scoop down there.

Q. What kind of work do they do?

159 A. Well, that is a dirt mover.

Q. Filling in again the rivulets?

A. Yes, sir, filling in washouts.

Q. On March 24, 1953, did your boss Wright come to the job?

A. That he did, at noon.

Q. Did you see the defendant Jack Green at all during that day?

A. Not that day, no, sir.

Q. Directing your attention to March 25th, did you continue your work on the levee?

A. I did.

Q. And in the same manner as on the 23d and 24th?

A. I did.

Q. Was your boss Ralph Wright at the levee on that day at any time?

A. My boss only come up there on the 24th, it was the day my boss come up there.

Q. Did you see the defendant Jack Green at all on the 25th of March?

A. No, I didn't.

Q. Directing your attention to the 26th of March, 1953, will you tell the court and jury what occurred on that day at that place?

160 A. Well, on the 26th there was work until about ten o'clock, and there were six men approached me and they told me to park my "cat" until I had a laborer.

Q. Until you had a laborer?

A. That is right, until I got a laborer.

Q. What did you do, if anything?

A. Well, I told them I would go call the business agent, my business agent, and I didn't get a hold of him; but I got a hold of his assistant, Marshall Galway.

He told me to park it and come on in, and that is what I did.

Q. Going back in time to when the six men approached you and asked you where the laborer was, what did you say to them?

A. I told them I didn't have one.

Q. What did they say to you then?

A. They told me to park the "cat" until I got a laborer.

Q. Did you do so?

A. Yes, sir.

Q. Did you cease working?

A. Yes, sir.

161 Q. Did you ever go back to the levee again on that job?

A. No, sir.

Mr. Oxtoby: That is all.

The Court: You may cross-examine.

Cross-Examination by Mr. FitzGerald.

Q. Mr. Luhning, how long have you been an operating engineer of these large earth-moving machines?

A. I worked out of that local for thirteen years, sir.

Q. During all of that time have you been a member of that local?

A. No, sir, I worked on permit out of there.

Q. Well, were you—in order to get a permit, you are a member of the engineers union, are you not?

A. A member?

Q. Yes.

A. No, sir, I don't hold a card out of the operating engineers.

Q. Sir?

A. I don't have a card out of the operating engineers.

Q. Well, you are affiliated, by reason of the permit and work out of a particular local, is that it?

162 A. That is right, sir.

Q. And you have done that for thirteen years?

A. Yes, sir.

Q. Well, Mr. Luhning, you were doing that on the 23d and 24th and 25th and 26th of March of 1953, weren't you?

A. Sir?

Q. You were working on such a permit?

A. Yes, sir.

Q. And considering yourself bound by the obligations of that local union because of that permit, is that right?

A. I did not quite get that, sir.

Q. Well, you considered yourself bound by the obligations of the other members of that local?

A. Of Local 520?

Q. Yes.

A. Yes, sir.

Q. On all of those days?

A. On all of those days, yes, sir.

Q. Yes. Now when Mr. Green was out there on the 23d, he asked you to have your boss do what? Will you tell us.

A. Contact Mr. Green.

163 Q. To contact him?

A. And be up there on the levee the following day.

Q. Do you know who is your boss?

A. Ralph Wright, Jr.

Q. Do you know whether Mr. Ralph Wright, Jr., did contact him?

A. Well, he wasn't there that day, and we tried to call him.

Q. I didn't ask that. "Contact" doesn't mean being in a particular place.

Mr. Alexander: We object to that.

Mr. FitzGerald: I am cross-examining him, your Honor.

The Court: Go ahead.

By Mr. FitzGerald: Q. "Contact" does not mean that he had to be on the levee. He could do it by phone or otherwise, couldn't he, get in touch with him, do you know what I mean?

A. Yes, I believe my boss did talk to Mr. Green.

Q. You didn't make any appointment for Mr. Wright and Mr. Green to meet there on the 24th at any particular time, did you?

A. At noon is when Mr. Green told me to have my boss up there.

164 Q. Mr. Green told you to have Mr. Wright there at noon?

A. That is right. He said "at noon" and my boss was there at noon, and stayed until about two o'clock, two-thirty.

Q. Well, there were phones in the vicinity of the place where he was, weren't there?

Mr. Stoddart: Object. That is argumentative.

The Witness: What is that?

By Mr. FitzGerald: Q. There were phones there? I want to know the fact.

A. Telephones on the Chain of Rocks—I was working—

Q. In the neighborhood of where you were working.

A. I couldn't leave the job.

Q. No. I didn't ask you what you could do. I asked if there were phones in the neighborhood.

A. I imagine there was around there.

Q. Well, how could you get in touch with whoever you did when you stopped working there on the 26th?

A. On the 26th?

Q. Yes, sir.

A. I went over to the operator or Corps of Engineers' office. I drove up there and used the phone.

Q. How far was that from where you were when
165 Mr. Wright came there?

A. About a mile, I would say.

Q. Was it about the same distance that it was from you when you went over there to telephone when Wright was there?

A. It wasn't much difference in the distance the way I went.

Q. You were able to get over to the phone, is that right?

A. On the 26th, yes, sir.

Q. Yes. Did Wright go over there to try to telephone?

A. I don't know about that, sir. He was sitting on top of the levee.

Q. On the 24th, the day he came in there and you say he waited around two hours and a half?

A. Well, he went up into Granite City.

Q. Oh, he did. You didn't know what he did in Granite City, of course?

A. No, sir, I was working on the levee.

Q. Well, did you ever tell the Government that he said that—Green said he would meet Wright there on the 24th, he didn't show up, and that he didn't show up on the 25th?

A. I told the Government that he didn't show up
166 on the 24th.

Q. You didn't tell them anything about his not showing up on the 25th?

A. I said I never seen Jack Green after that on the 23d, is what I told the Government.

Q. I see. Now Mr. Luhning, at the time these men were there, had you been working for Ralph Wright, Jr. as the president of the Midway Excavating—whatever the corporate title may be—Company?

A. Had I been working for him?

Q. For some time?

A. Yes, sir.

Q. How long?

A. About three years, sir.

Q. Had you worked on the levee during that period of time?

A. On the Chain, you mean up in that area?

Q. Yes, on this levee about that canal which was being built in order to avoid the hazards of the Chain of Rocks part of the river.

A. No, sir, that was the first time I worked right there. We worked on the other levee down around Wood River for repair work, but that was the first time I had ever worked on the Chain.

167 Q. But you hadn't worked on the levee for this new canal prior to this time?

A. No, sir.

Q. Now how long had you been at work there when Mr. Green first talked to you on March 23d?

A. I—about two days, I believe.

Q. And you did work all the rest of the 23d?

A. That is right, sir.

Q. He didn't tell you to stop that day?

A. No, sir, he told me to get in contact with my—

Q. Have Mr. Wright—

A. Get in contact with him.

Q. Get in contact with him?

A. Yes.

Q. And then suggested that he meet him the next day out there?

A. That is right.

Q. And you worked all the 24th?

A. I worked the 24th, yes, sir.

Q. And you worked the 25th?

A. 25th.

Q. And you have told us now everything that happened out there that you can recall, is that right?

A. That is right.

168 Mr. FitzGerald: That is all.

The Court: Is that all of this witness?

Mr. FitzGerald: Yes, sir.

Mr. Alexander: Just one minute, your Honor.

The Court: I thought that was all.

Redirect Examination by Mr. Oxtoby.

Q. Was there anything in the nature of the work you were doing for Mr. Wright that called for a laborer?

Mr. FitzGerald: Now just a moment. I object to that question as calling for an opinion which is not proper at all in this case.

The Court: Objection sustained.

Mr. Oxtoby: That is all.

Mr. FitzGerald: That is all, Mr. Luhning.

The Court: All the next.

(Witness excused.)

169 RALPH C. WRIGHT, JR., called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Alexander.

Q. Will you state your name, please?

A. Ralph C. Wright, Jr.

Q. Where do you live?

A. Freeburg, Illinois.

Q. Is that in Madison County?

A. St. Clair.

Q. Close to East St. Louis?

A. About twenty miles.

Q. What is your occupation, Mr. Wright?

A. Excavating contractor.

Q. How long have you been engaged as contractor in that business?

A. July, 1950.

Q. Previous to that what had been your occupation?

A. Operating engineer.

Q. Did you have, during the time you were an operating engineer, did you have union affiliation?

170 A. Yes, sir.

Q. What union?

A. Operating engineer, Local 520.

Q. That is in East St. Louis?

A. Yes, sir.

Q. Do you continue to carry a card in that union?

A. Yes, sir.

Q. I will show you Government's Exhibit 3, Mr. Wright, and ask you whether or not in behalf of the Midway Excavating Company you executed that contract with the United States Corps of Engineers?

A. I completed over 50 percent of it.

Q. Well, did you execute it? In other words, did you enter into this contract with the Corps of Engineers?

A. Yes.

Mr. Oxtoby: He thought you meant finished.

By Mr. Alexander: Q. Did you begin work under the terms of the contract?

A. Yes, sir.

Q. What was the nature of the work that you were called upon to do under this contract, what were you to do?

A. We were to rent a "cat" to the Government and
171 they repaired scores in the levee with it on the Chain of Rocks canal.

Q. Was that work done under the supervision of someone?

A. Under the supervision of the Government inspector.

Q. Did the Government inspector direct you to the various places on the levee within this sphere of your contract of where the work was to be done?

A. He told us what to do, yes.

Q. Now how long did you continue to work under this contract?

A. Well, we started part of it, if I remember right, in October.

Q. Of what year?

A. 1952.

Q. What occurred then?

A. Well, we worked—I don't know exactly—maybe four or five weeks, and the water came up, and I had something to do for the "cat", so I got permission from the Corps to take the "cat" out because we wasn't going—we wasn't doing much good; there was going to be a delay in the contract anyhow, and I took the "cat" out and they called me back in January to resume the contract,
172 continue the work.

Q. Well, when they called you back, had the water gone down so you could resume work on the levee?

A. Yes, sir; that is right.

Q. Were you required under this contract to carry on such work during weather conditions—

A. It states—

Q. —when it rained and things of that kind where the work was not carried on—

Mr. FitzGerald: If the Court please, the contract speaks for itself.

The Court: He said it does. He said it is in the contract.

A. It is in the contract if the ground—

Mr. FitzGerald: If it is, it tells what it is.

Mr. Alexander: I am asking about the actual execution of it.

Q. Were there days when you could not work on account of weather conditions?

The Court: He may answer.

The Witness: Not because of the weather, no. Because the river came up. You couldn't work if the water was high.

173 By Mr. Alexander: Q. Well, you began to work on the contract the second time in January?

A. Yes, sir.

Q. Do you remember whether or not you worked every day, or were there intervals when you didn't work, if you remember?

A. Well, when we moved back up there, we worked four or five days putting some "dead men" in for the Corps of Engineers with a Hy-lift.

Q. What is the difference between a Hy-lift and a "cat"?

A. Well, they are both "cats". One of them has got a bucket on the front of it to pick the dirt up, and the other one has got a bulldozer blade up. It just pushes the dirt.

Q. Was this work that you did on that place specifically provided for in this contract?

A. No, sir.

Q. Was it done as a favor to the Corps of Engineers, using your equipment and your operating engineer?

Mr. FitzGerald: Wait just a moment. What difference does it make whether it was done as a favor?

I object to it.

The Court: I don't know what difference it makes.

By Mr. Alexander: Q. Was this particular work with respect to these "dead men" outside of this contract?

A. Yes.

The Court: He said it was.

By Mr. Alexander: Q. Now then, did you thereafter resume work on the levee under the contract?

A. In March we resumed work with the "cat" and a scoop, March 23d we started.

Q. Now who was employed by you to operate your equipment on that day?

A. Frank Luhning.

Q. Did Mr. Luhning make any report to you on that day with respect to an occurrence that took place where he had been working?

A. He called me up that night, and told me that Jack was out to see him.

Q. Jack who?

A. Jack Green was out to see him and asking him were his laborer was.

Q. Anything else?

A. Frank told him that he didn't have one, and so he left word with Frank for me to get in touch with him.

Q. Anything else?

A. Well, I tried to call Jack that night, and he wasn't at home; so he told me—Frank told me that Jack said for me to be back up on the levee the next day, so I went up there and supposedly he was supposed to be there.

Q. Did he tell you what time to come?

A. About noon, that is what Frank said.

Q. Now did you go there at noon on the 24th?

A. Well, I wouldn't say just exactly at noon I was there.

Q. Well, approximately.

A. I was there; yes, sir.

Q. How long did you remain?

A. About an hour.

Q. Did Mr. Green come there on that occasion?

A. No, sir.

Q. Had you known Mr. Green prior to this time?

A. I knew who he was, yes, sir.

Q. Now did anything occur in this matter on the next day, the 25th?

A. No.

176 Q. What happened on the 26th of March?

A. Frank said there was six men came up to him—

Mr. FitzGerald: Just a moment. I object to what Frank said.

The Court: Objection sustained.

By Mr. Alexander: Q. Did you receive a report from your employee on that day?

A. Yes, sir.

Q. When did you receive it? Can you tell us?

A. No. He called the house, and I wasn't there—

Mr. FitzGerald: Just a moment. You are only asked when you received it, Mr. Wright.

The Court: Objection sustained.

His answer may be stricken.

He said called the house. I wouldn't know how he would know that when he wasn't there.

By Mr. Alexander: Q. When did you, on or after the 26th, first see Mr. Luhning, your employee?

A. Well, I saw him that day sometime, but the exact time I couldn't tell you.

Q. Did the work on the levee continue throughout the 26th?

A. No, sir.

177 Q. Do you know what time the work ceased on that day, approximately?

Mr. FitzGerald: If he was there. There isn't any proof of that.

The Court: Yes, if he was there. You may answer.

Mr. Alexander: If he knows.

The Witness: I know what I got paid for. The Government paid me for two hours.

Mr. FitzGerald: I object to that and move it be stricken.

The Court: Yes, that may be stricken.

By Mr. Alexander: Q. Well, did you thereafter talk with respect to the matter of that work with your employee Frank Luhning?

Mr. FitzGerald: If the Court please, that would be pure hearsay.

The Court: If he talked to him?

Mr. Alexander: No, it wouldn't be.

The Court: He asked if he talked to him. I think he may answer that, whether he did.

The Witness: Yes.

By Mr. Alexander: Q. He did.

Now can you tell us when you talked to him?

178 Mr. FitzGerald: Objection.

The Court: I think he may answer that.

By Mr. Alexander: Q. Was it on this same day or evening?

A. Yes, sir, it was on that same day, after those men came out there.

Mr. FitzGerald: Just a moment, please. I object.

The Court: Objection sustained.

By Mr. Alexander: Q. Did you see Mr. Luhning and talk to him, or was this talk over the telephone?

A. I saw him.

Q. Where did you see him?

A. I don't remember exactly.

Q. Now did he report to you, make a report to you as

his employer, as to an occurrence on the levee on that day in connection with his work, not what he said, but did he report to you?

A. Yes.

Q. Did you thereafter do any work on that levee under your contract?

A. No, sir.

Q. What did you do next, if anything, with respect to this matter?

179 A. I went to Mr. Green's office and talked to him.

Q. When did you go to Mr. Green's office?

A. Well, that same day.

Q. The 26th?

A. I think so, yes, sir.

Q. Where was his office?

A. In Granite City.

Q. Was there anyone with Mr. Green or with you when you called there at the office?

A. Oh, there was some men in the hall. Who they were, I don't know.

Q. Well, what I mean is: Were there any present at your conversation where they would hear what the conversation was, other than you and Mr. Green?

A. They probably could have heard us, yes.

Q. Where did the conversation take place at this building, was it in his office?

A. I went in his office and we walked out to the door, Mr. Green and I, and I talked to him by the door.

Q. By the door?

A. Yes.

Q. Will you state what you said on that occasion, and what he said on that occasion, in substance?

180 A. Well, I asked him what the trouble was; and he said we needed a man out there with that "cat" and scoop.

And I told him that we done a lot of maintenance work for the Government and we never did have one before, and I didn't see no need for him being out there, and if I had to have one out there, I would move the "cat" and scraper out.

Q. What did he say?

A. Well, he said, "That is the thing to do."

Q. Did you move your equipment out?

A. Yes, sir.

Q. Did you resume work on that contract?

A. No.

Q. Now will you state what the general nature of this work on the levee was?

A. It was filling in washouts in the levee.

Q. And leveling them off?

A. Yes, sir.

Q. In your opinion, did you require any assistance or laborer to work in conjunction with the operation of the machine on that particular work?

Mr. FitzGerald: I object to that question, your Honor.

181 The Court: I think he may answer, in his opinion.

The Witness: I don't know what he would have done, no.

By Mr. Alexander: Q. You don't know what who would have done?

A. The laborer would have done.

Q. In other words, there wasn't anything for the laborer to do in connection with the operation of the machine in that particular work, is that right?

A. In that particular job, yes, sir.

Mr. Alexander: That is all.

The Court: We will take a short recess for ten minutes. The jury may retire.

(Whereupon a recess was had.)

The Court: You may cross examine, counsel.

Mr. O'Neill: Yes, your Honor. Just a second, please. I have got one of these contracts. Do you gentlemen have the other one?

Mr. Alexander: I will look and see.

182 *Cross Examination by Mr. O'Neill.*

Q. Mr. Wright, you have been an excavating contractor since July of 1950, is that right?

A. Yes, sir.

Q. Is that the time that you incorporated the Midway Excavating Company?

A. That is right.

Q. That is an Illinois corporation?

A. Delaware.

Q. A Delaware corporation?

A. Yes.

Q. And you are the head of it at the present time, is that right?

A. That is right.

Q. Now prior to that time you say that you had been an operating engineer connected with the engineers local 520 in East St. Louis?

A. I am a member of the local, yes.

Q. And you entered into this contract with the Government to repair the levee under the supervision of Government inspectors. Do you remember about when it was?

A. When we got the contract, no, sir. Sometime in 183 October, I believe; but I am not sure.

Q. Of 1952?

A. Yes, sir.

Q. Did you start to work at that time under the contract?

A. We worked some in 1952. We worked about four or five weeks. I don't remember exactly how long we worked.

Q. Was Mr. Luhning operating for you all through that period?

A. No, sir.

Q. In other words, you had different operators at different times while you were running your equipment up there?

A. I had one other one, yes, sir.

Q. One other operator?

A. Yes, sir.

Q. Then as I recall, you told Mr. Alexander the work was cut off during the winter months because the water came up and you couldn't operate your equipment successfully then?

A. That is right, sir.

Q. And they called you back in January?

A. Yes, sir.

184 Q. Did Mr. Luhning operate for you in January when you went back then?

A. Not the first day he didn't, no, sir.

Q. Would you say that the time you resumed work was about the 22nd of January?

A. It was after that. The exact date I don't know.

Q. I will ask you if during a period from January 22nd until about the 6th of February you did some work for the Government on this levee contract, excavating and back-filling for "dead men" at the Chain of Rocks canal, a total of 58 hours for the period from January 22nd to February 6th, do you remember that work?

A. No, sir.

Q. Now what kind of work would that be, excavating and back-filling for "dead men"?

A. That would be construction work, the Government asked me to bring that Hy-lift up there for them.

Q. Was that in connection with this contract that we have been talking about?

A. They paid me the same rate for that Hy-lift that I got on that contract. I took that Hy-lift up there to work for the Government as a special favor because they
185 called me and asked me would I take that Hy-lift up there, and I told them yes.

Q. The Hy-lift, as I understand it, is what sort of piece of equipment, for the jury's information?

A. Well, it is a caterpillar tractor with a 1¼ yard bucket on the front of it. It digs—you can dig a hole with it or push over trees or any back-fill or anything you want to do with it pertaining.

Q. I expect the word "Hy-lift" comes from the fact that the bucket will be elevated high and you can throw the dirt any place you want to.

A. Well, you can pick it up and dump it, yes.

Q. Now on this particular work, in connection with these "dead men", this back-filling and "dead men" under this contract, didn't you use laborers on that job with your equipment?

A. The Government paid them, yes, sir.

Q. Did you use laborers in connection with that equipment on that work?

A. I had nothing to do with that job. I rented that Hy-lift to the Government, and they done the work as they saw fit. I had no jurisdiction over that Hy-lift. I didn't tell them what to do or how to do it or nothing. I rented them a machine—

186 Q. Was there any difference in the Government's use of that equipment than there was in the equipment that you were using on the 26th? Didn't the Government have the same sort of supervision over both of those jobs?

A. It is two different jobs. One of them was contract and one of them was maintenance.

Q. You mean that you did not have a contract with the

Government on the work from the 22nd of January to the 6th of February?

A. No. They called me and asked me would I send the Hy-lift up there. I had the contract I had which was still in effect.

Q. Yes. Let me ask you this: Have you seen this Government's Exhibit 3?

A. I have got one just like it, yes.

Q. And isn't the contract number of that 4219?

A. Yes, sir.

Mr. O'Neill: Will you mark this as Defendants' next exhibit, please?

(Whereupon a document was marked Defendants' Exhibit 5 for identification.)

By Mr. O'Neill: Q. Will you look at this photostatic 187 copy of a daily report marked as Defendants' Exhibit No. 5 and tell me whether or not it doesn't say on the face, "Contract No. 4219"?

Mr. Alexander: Object to that.

Mr. Oxtoby: The document has not been identified yet, your Honor, by the persons who have paid for it.

Mr. Alexander: It speaks for itself.

The Court: Ask him if it has certain numbers on it. Was that your question?

Mr. O'Neill: That is all, your Honor.

The Court: He may answer.

The Witness: Yes.

Mr. Alexander: It speaks for itself.

Mr. Oxtoby: Yes, that speaks for itself.

Mr. O'Neill: That is the same number you said was your contract number that you were working under on the 26th of March, is it not?

A. I believe so, yes, sir.

Q. Now I will ask you, and will you tell the jury whether or not in the period from January 22nd to the 6th of

February that the work of excavating and back-filling for "dead men" at the Chain of Rocks canal wasn't done
188 by you under Contract No. 4219.

Mr. Oxtoby: Just a minute. It is repetitious. He has already answered no.

Mr. Alexander: Objection.

The Court: One of you make the objections. I'm afraid the reporter won't get it.

Mr. Oxtoby: Objection on the ground of repetitiousness.

The Court: You are making the objection. What is the objection?

Mr. Oxtoby: It is repetitious.

Mr. O'Neill: I have just identified this thing.

Mr. Oxtoby: You asked for the question three minutes ago as to whether or not he was working under the contract for that period.

He said no.

The Court: I think he may answer that after being refreshed in this matter, if he is refreshed, whether you were working under contract.

Mr. Alexander: We don't know what has been handed to him, your Honor.

189 The Court: I don't either. I am asking him now, or he is asking him whether or not he was working under the contract.

Mr. O'Neill: I will stipulate with the Government right now—we will offer this exhibit in evidence—it is a piece of paper I got from the Government.

Mr. Alexander: We would like to see it.

The Court: Let him look at it and see if we cannot get agreement on it. There ought not to be any quarrel about that, whether it was under contract or not, if it says so.

Mr. Alexander: If the witness had any part in the making of this record, we have no objection to it. But the witness cannot identify it. I will say that it is a government

record. But we want the man who made it to explain the record and not someone who does not know anything about it.

The Court: I think he may answer the last question, even though it is repetitious, whether or not at the
190 time you were performing this special work that you speak of you were under contract or were not.

The Witness: They paid us under that contract, yes.

The Court: All right.

By Mr. O'Neill: Q. Now Mr. Witness, you told the jury in connection with the work on the levee, from January 22nd to February 6th, will you tell the jury whether or not there was a laborer employed in connection with the operation of the machine that was used there at that time?

Mr. Alexander: It has been asked and answered. We object to it, if the Court please.

The Court: He may answer.

The Witness: There was a laborer there and the Government paid him, yes, sir.

Mr. O'Neill: I move to strike that. I did not ask who paid him.

The Court: I think it may stand.

Mr. O'Neill: O. K.

Q. Now getting on until the 23rd of March, you were still working up on the levee under contract No. 4219,
191 were you not, and Frank Luhning was operating for you?

A. Yes, sir.

Q. Do you know what day of the week the 23rd of March was?

A. I could look at the time book. I don't know offhand.

Q. Well, to refresh your memory, it was a Monday. Does that about agree with your recollection?

A. I don't know. As I said, I can look at the time book and tell you what time it was, but I couldn't offhand.

Q. Well, Monday, March 23rd, you did have a man Luhning working up on a piece of equipment, that was the start of a new week.

A. Yes, sir.

Q. Do you remember whether or not you had worked the previous week?

A. No, sir.

Q. You say you don't know, or you had not worked?

A. I don't remember.

Q. Do you know whether you worked on the 17th of March?

A. There?

Q. Yes, on the east side of the levee, in the same 192 place you were working on the 23rd of March?

A. I would have to get the time book. I can't remember a year and a half ago.

Q. All right.

A. I believe we were, but I mean I am not positive.

Q. Mr. Wright, you recall what happened on the 23rd of March, don't you?

A. Yes.

Q. You got a report from Luhning who told you to call Jack Green, didn't he?

A. Yes, sir.

Q. Did you call Jack Green on the night of the 23rd?

A. Yes, sir.

Q. Where did you call him from?

A. East St. Louis, where I lived.

Q. I thought you said you lived at Freeburg.

A. I do now; I did not then.

Q. Where were you living in East St. Louis then?

A. 239 North 67th Street.

Q. And you say you called Jack Green from your home in East St. Louis on the night of the 23rd of March?

A. Yes, sir.

Q. And you didn't get a hold of him?

193 A. That is right.

Q. Did you ever talk to him over the phone in connection with this particular transaction?

A. Not that I remember.

Q. To refresh your memory, I will ask you if it is not a fact that on some night between the 23rd of March and the 26th of March, before the 26th of March you called Jack Green on the phone and asked him what he wanted, that he told you he wanted a laborer on that job up at the canal, and that you told him that you weren't going to put one on.

A. Jack told me that when I went down to his office.

Q. Now you can answer the question. That was not what I asked you.

M. Oxtoby: I think counsel ought to frame the question correctly. He ought to set it up as an impeaching question by asking if the question was asked and the answer given.

Mr. FitzGerald: It does not have to be any impeaching question. He has a right to an answer.

Mr. Oxtoby: Object to the form of the question.

194 The Court: Objection overruled.

You may read the question.

(Whereupon the last question was read back.)

The Court: That is not confusing.

Mr. Oxtoby: He answered it.

The Court: Let's get it then.

The Witness: I don't think I did, no.

By Mr. O'Neill: Q. You mean you don't think you can, or you know you did not?

Mr. Alexander: I object to that as improper and argumentative.

The Court: He may answer whether he knows he didn't or whether he has no recollection of it. That is what it appears to be the question is.

A. That is right.

By Mr. O'Neill: Q. You mean what is right is you have no recollection of that phone call, is that right?

A. I don't remember it, no.

Q. At that time, I will ask you, Mr. Wright, if it is not a fact that your father, Ralph Wright, Sr., was the business agent for Local 520, the operators union, 195 isn't that right?

A. That is right.

Q. And wasn't the matter of whether or not a laborer worked on that equipment a jurisdictional matter between the laborers and the operating engineers?

A. No.

Q. Why not?

A. That particular job on that piece of equipment they had no work on that equipment. It was a "cat" and scraper there, and there was nothing for the man to do.

Q. Who made the decision as to whether there wasn't any work on that equipment?

A. I am paying him. I made it.

Q. Who made the decision as to whether or not there was any work on that equipment when you were putting those "dead men" in there?

A. The Government.

Mr. O'Neill: The Government has an exhibit which is in the contract. May I see that, that little gray booklet?

Mr. Alexander: That little gray booklet, yes.

By Mr. O'Neill: Q. Are you familiar with the agreement between the Southern Illinois Builders Associa-
196 tion and the International Hod Carriers and the Building Common Laborers in Local No. 397?

A. Not familiar with it, no. I know what part of it is in there, but all of it, no.

Q. Do you know that there is a provision in that contract which calls for members of the laborers union, when helpers are needed for certain types of operations such as

bricklayers, masons, plasterers, carpenters, and so on, for including operating engineers—

Mr. Alexander: We object to that.

Mr. O'Neill: I am asking if he had knowledge of that.

Mr. Alexander: He is not a party to this contract. His business is not even in the jurisdiction of this.

The Court: I agree with you. I think the objection will be sustained as to that question whether it is in there or not.

Mr. O'Neill: I will ask him:

Q. Isn't your business conducted in the area covered by the Southern Illinois Builders Association?

A. Yes, sir.

Q. Is that right?

197 A. Yes, sir.

Q. When you work in the Southern Illinois Builders Association, don't you come under the terms of their contract?

Mr. Alexander: We object to this. He is not a member of that.

The Court: We will find out.

Are you a member of that Association?

The Witness: No, sir.

The Court: All right, then he wouldn't know.

Objection sustained.

By Mr. O'Neill: Q. Mr. Wright, you say you still carry a card in the engineers local?

A. Yes, sir.

Q. To that extent and for those purposes you are a union labor man connected with a union labor organization, Local 520 of the operating engineers in East St. Louis?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Now I asked you a minute ago a question as to whether or not a laborer should be doing work on your equipment wasn't a jurisdictional matter, and you said
198 no.

Now I will ask you in furtherance of that question, if you are operating a piece of your equipment, or let's say that if on the 23d to the 26th of March you were operating your equipment at the Chain of Rocks Canal and either the man who was operating the machine itself or some other member of the operators union was doing certain work which the laborers claimed to be their own, such as carrying water, carrying gas, moving stumps—

Mr. Oxtoby: Objection, assuming facts not in evidence.

The Court: Finish your question.

Mr. O'Neill: Let me finish my question. I realize you will have plenty of say about it afterwards.

Q. But assuming that that situation existed, and that either the man who was operating your machine or some other operator—member of the operators union was doing work which the laborers claimed to be theirs, that is, such work as carrying gasoline or carrying water, moving stumps, getting boards out of the way, cleaning the tracks on the machine when they got muddy or got jammed
199 up and any one of the other innumerable operations that go with a piece of heavy equipment like that, and the laborers came along and said, "Hey, you are doing our work and we want a man on there to do that work ourselves," I will ask you if that is not a jurisdictional question between the operators and the laborers?

Mr. Alexander: Now we object, if the Court please.

The Court: Objection sustained.

By Mr. O'Neill: Q. Your father was the business agent for the operating end of it?

Mr. Alexander: Object to that as repetitious.

Mr. O'Neill: Wait a minute. I am just making a preliminary statement. I have not finished the question.

The Court: He said he was.

By Mr. O'Neill: Q. You were a member of the operating engineers. Now I will ask you, based on that sort of background, if you don't know that it is a fact that the operating engineers Local 520 had the same sort of an agreement with the Southern Illinois Builders Association as Local 397 had?

Mr. Alexander: Objection.

200 The Court: I think he may answer that, if he knows.

Mr. Oxtoby: Object to the form of the question.

The Witness: The same agreement?

By Mr. O'Neill: Q. Same sort of agreement.

A. Same sort of agreement, yes.

Mr. Stoddart: I object to that, "same sort of agreement," with two hundred paragraphs.

The Court: Yes, I think you ought to introduce the agreement if it is there.

Mr. O'Neill: Do you want to strike his answer then, too? He said yes.

Mr. Alexander: We will ask that the answer be stricken.

The Court: It may be stricken.

Mr. O'Neill: I think that is all.

The Court: Any further questions?

Mr. Alexander: Yes, your Honor.

201 *Redirect Examination by Mr. Alexander.*

Q. Mr. Wright, in your business, what does the term "swamper" mean?

Mr. O'Neill: I don't think that is proper redirect.

The Court: I think if he knows, he may answer it. That is part of the indictment.

The Witness: I will say I don't know.

A. Well, if there is any logs to be—like if he had some

logs to hook a "cat" on and he used a cable to pull them, or various things that he has got to do—

By Mr. Alexander: Q. Well now, as a contractor, when you are operating one of these heavy machines, and you have an operator and they are paying the operator, are there times when you deem it economical to employ what is known as a "swamper" to work with the equipment?

A. Yes, sir.

Q. Now on this particular job, you made a bid, did you not, to the Corps of Engineers for renting your equipment with an operator, is that correct?

202 A. Yes, sir.

Q. What was your bid based upon as far as the employment of laborers was concerned?

Mr. O'Neill: Now if it please the Court—

The Court: Based upon, or—did he say that?

Mr. O'Neill: He said, "What was it based upon?"

I will object to it.

The Court: Objection sustained, what he based it on.

By Mr. Alexander: Q. Did you deem it necessary in connection with the work that you were to carry on under your contract to employ a swamper or a laborer in connection with the operation of the machinery?

Mr. O'Neill: Object to that.

By Mr. Alexander: Q. (Continuing.) —or equipment?

The Court: Objection sustained. I don't think it is material as to what he based it upon. His answer before that what is necessary is I think material. That is his version of it. But not what he based his bid on.

Mr. Stoddart: Your Honor, if it comes in, we would 203 like to be heard on it. We have some authorities.

The Court: No.

Mr. Stoddart: He can testify as to the economic situation surrounding this contract and what occurred and what

would have occurred had he been employed—had he been required to employ unnecessary labor.

Mr. O'Neill: I will object to those remarks.

The Court: Objection sustained. I sustained the objection.

Mr. Stoddart: We would like to be heard on it. Take the jury out. We have got the cases.

The Court: That isn't that question. It is what he based his bid on I am referring to.

Objection sustained.

By Mr. Alexander: Q. In preparing your bid, did you include any item of expense for the payment of a swamper for the various machines that you were renting to the Government?

Mr. O'Neill: I will object to that.

204 The Court: I think he may answer that, whether he considered that in making his bid. He may answer.

By Mr. Alexander: Q. Did you give any consideration to paying a swamper to work on each machine that you rented to the Government?

A. No, sir.

Q. And you reason for doing that was what?

Mr. FitzGerald: Just a moment. Object to the reason.

The Court: Objection sustained.

By Mr. Alexander: Q. Now was the work which you did during some four, five or six days in January different in character from the work which you agreed to do under your contract with the Corps of Engineers?

A. Yes.

Mr. O'Neill: Will you read that question again?

The Court: Was his work that he did during these days different in character than his contractual job that he agreed to repair this levee.

He said it was.

205 Mr. O'Neill: I object to that on the grounds the contract would speak for itself.

Mr. Stoddart: Now you asked him on cross examination—

The Court: Just a moment. You asked him on cross examination. The objection is overruled. I already sustained the right to ask it. Go ahead.

Mr. Alexander: I think that is all, your Honor.

Mr. O'Neill: I think I have a few questions.

Recross Examination by Mr. O'Neill.

Q. I think, Mr. Wright, two or three questions will straighten all of our thinking out on this thing.

The work which you did in January and which is covered by the Government report which we have identified as Defendants' Exhibit 5 refers to Contract 4219.

Now were you paid any extra money yourself for doing that kind of work?

A. Can I answer that in my own way?

Q. Yes, sir, I would like for you to straighten us 206 all up on it.

A. All right. Herman Clark, which was the head of the hired labor division, or whatever it is pertaining to that contract, he takes care of those contracts.

Q. You mean the big one, Ralph?

A. Yes, sir.

He called me one night and said, "Ralph, when we—"

In the construction of that canal they omitted two or three "dead men", they forgot them, and he said, "Would you take your Hy-lift up there and do that work?"

"Now," he said, "it is not in your contract to do it. If you don't want to take it up there, you don't have to."

"And," he said, "we will pay you the same rate for that Hy-lift as you got for that dozer."

And I said, "It doesn't make no difference. If you want the Hy-lift, I will take it up there and you can use it."

So I took it up there, and at one-thirty the next day, or it

wasn't the next day, the first day we worked, one of my operators was on it and Jack came out there—Jack
207 Green came out there and asked Norm where his laborer was, and Norm told him that he didn't have any.

So he parked the machine—that was approximately one-thirty because we got paid for 5 hours that day.

If I remember right, the machine set the next day, and Mr. Green got hold of Ollie Taylor, and they put a laborer on that tractor and resumed work. And when the Hy-lift got done, we moved it out.

Q. All right. Now that is the whole story of that situation?

A. That is right.

Q. Now the other part of it, Ralph, is this:

Mr. Alexander: We object to what he is going to tell him as to the other part of it.

The Court: I suppose he is going to ask a question.

Mr. O'Neill: I don't know what they are jumping on me for.

Q. (Continuing.) The other part is this: Will you tell the jury and the court whether or not the Government
208 paid you for that work in connection with that "dead man" extra or whether they paid you under the bid that you had made under this contract?

A. They paid me the same rate as I was getting on that contract, $40 a day, I think. I don't remember what it was right now.

Q. Well then, in other words, isn't this the fact: That when you take into consideration the bid that you made on this contract, you didn't know what the Government was going to tell you to do, you were just renting them the equipment, is that right?

A. That is right.

Q. And in January they came along, and you put a laborer on there.

A. They put him on.

Q. They put him on?

A. That is right.

Q. Now later on you decided you did not want to put one on?

A. That wasn't how I bid it. I bid it to furnish them an operator and a tractor and fuel and oil and grease. That is my understanding of that contract.

209 Q. And that is the way you bid it?

A. That is the way I bid it.

Q. But working under the contract at one time you did have a laborer working under it, and they paid him, is that right?

A. Not me.

Q. Not you, they paid him.

A. The Government paid him when we moved that tractor out on the levee, we got nothing to say on it, the Government pays you so much an hour, and they do what they want to. You got nothing to say on that job whatever.

Q. Your contract, Ralph, with the Midway was for $3316.00, approximately?

A. Well, if you will turn over there you will see the number of hours in there. It states so many hours at so much per hour.

Q. Well, in other words, just for the information of the court and jury as to background on the contract, the $3316.00 does not represent a firm figure that you bid or a firm figure the Government agreed to pay you?

A. It can exceed that by 50 percent or more short of that by 50 percent.

210 Q. Your bid, however, was on an hourly rate, is that right?

A. That is right.

Q. Were there other bids submitted?

A. Yes, sir.

Q. On hourly rates, you don't know whether or not the other bids that were submitted by other contractors took into consideration the use of laborers on the job, do you?

A. I do not.

Mr. O'Neill: That is all, your Honor.

Mr. Alexander: Just a couple of questions.

Redirect Examination by Mr. Alexander.

Q. This Mr. Clark who called you with reference to the placing of these "dead men" that had been forgotten, was he an employee of the Corps of Engineers?

A. Yes, sir.

Q. And an agent of the Government with whom you had work in connection with this contract before that time?

A. Yes, sir.

211 Q. Did the fact that the Government employed some laborers to help set those "dead men" increase your expense in using your equipment on that job?

A. It didn't cost me nothing, no, sir.

Mr. Alexander: I think that is all.

Mr. O'Neill: That is all, I believe.

The Court: Is that all, gentlemen?

I have been requested to adjourn earlier tonight, and I will do so.

Mr. Alexander: Your Honor, may I just say one thing?

(An off-the-record discussion was held out of the hearing of the jury.)

212 WILLARD WOOD LAUER, called as a witness on behalf of the Government, having first been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Alexander.

Q. Will you state your name to the jury, please?

A. My name is Willard Wood Lauer.

Q. Where do you live, Mr. Lauer?

A. Clinton, Tennessee.

Q. What is your present occupation?

A. Project manager, construction work.

Q. For whom?

A. Rust Engineering Company.

Q. Doing what character of work? What are you working on?

A. Industrial construction.

Q. On any particular contract?

A. You mean a particular one at the moment?

Q. Yes.

A. It is for the Atomic Energy Commission at Oak Ridge, Tennessee.

Q. Now how long have you worked for the Rust Engineering Company?

213 A. Since 1951.

Q. At one time were you stationed at Granite City, Illinois?

A. Yes, I was.

Q. During what period of time were you stationed there, approximately?

A. Oh, for approximately two years. From March, 1952, until October of last year.

Q. October of 1953?

A. No, sir, that is right.

Q. Now in what capacity were you employed during that period of time by the Rust Engineering Company?

A. As project manager on the construction of a steel mill facilities for the Granite City Steel Company.

Q. Approximately how many men were employed in connection with that work?

A. Well, that number varied of course, I think at the peak we probably employed a total of about 1400 men.

Q. Did you, in connection with that work, have laborers employed—were there laborers employed?

A. Yes, there was quite a good-sized crew of laborers employed.

Q. Now, I will ask you whether or not the men 214 who worked for the company as laborers at Granite City were union men?

A. Yes, they were.

Q. Do you know what local they belonged to?

A. The laborers local at Granite City supplied us with our men. I think that is Local 397.

Q. Did you have anything to do with relations between the union and the management of the Rust Engineering Company?

In other words, did you have occasion to discuss questions of common interest between your company and the union?

A. Yes, I did.

Q. With whom did you carry on any negotiations with reference to the laborers employed during the year 1953, with whom representing the union?

A. Well, the business agent with whom I dealt from time to time was Jack Green.

Q. Did the union maintain what is known as a shop steward at your plant?

A. Yes, it did.

Q. Do you know who the shop steward was during the first half of 1953 representing the union?

A. The name was—I could call him by his nick-
215 name right quickly, but his name was "Bruce Wortman".

Q. What was his nick-name?

A. His nick-name was "Coon Dog."

Q. During the year 1953 and prior to, say, April 13, 1953, did you have occasion as a representative of the Rust Engineering Company to discuss labor problems and labor issues with the business agent of the Granite City Local, that is Mr. Green, and with Mr. Wortman, the steward?

A. Well, let me answer that question this way: The business of discussing the job problems with "Coon Dog," if I may refer to him that way, were normally handled by one of the superintendents, either Walter Shay or Jack Hammell.

If they did not solve their problems on that level, they called for Jack Green and sometimes I got into it frequently, and we discussed our problems on the level of management.

Q. And when problems—labor problems arose in connection with the employment of laborers, who was the representative of Local 397 with whom you negotiated with respect to such questions?

A. Normally it was Jack Green.

Q. Now do you remember an occasion on or about
216 April 13, 1953, when the labor force employed by the Rust Engineering Company left the place of their employment—

Mr. O'Neill: Pardon me, Marks. I don't think that is a proper question. He can ask him what happened on the 13th of April—

The Court: Go ahead: Let's save a little time. Go ahead with your question. Then you may object if you want to.

By Mr. Alexander: Q. Do you remember a time about April 13, 1953, when you had a discussion with Mr. Green with respect to the fact that a large number of the labor crew had left their place of employment, had left the plant or the place of their employment?

A. You mean had left our job?

Q. Yes, left your job.

A. Yes. Yes, I do.

Q. Do you remember that occasion?

A. Yes.

Q. At that time, can you tell us approximately how many laborers you had employed who were either members of that Local 397 or were permit workers under
217 the jurisdiction of Local 397?

A. The number that were on the payroll at that time of laborers was some place between 400 and 450. That does not necessarily mean that there were that many working that day.

Q. Can you tell us approximately how many left the site of the job on that day?

A. Well, the working force on that particular day was some place in the neighborhood of 350 to three hundred and—oh, maybe 395, and they all left around—

Q. Do you know what time in the morning they left?

A. Some place shortly after nine o'clock in the morning.

Q. At what time did you learn they had left?

A. Well, during the process of their moving out through the gate, the job superintendent advised me of the fact that they were all leaving, and it was approximately ten minutes after nine, I would say, some place in that neighborhood.

Q. Did you then observe them leaving?

A. I saw some of them, yes.

Q. Would you say they left in a body?

A. I don't know that you could say they left in a
218 body. They were pretty continuous. There was a pretty continuous stream. Most of them were gone when I noticed them leaving.

Q. Now, did you do anything about it, Mr. Lauer?

A. Yes, I did. I immediately called Mr. Green.

Q. Had you talked with Mr. Green over the phone before that?

A. Yes, I had frequently.

Q. Did you know his voice?

A. I did.

Q. Did you get in touch with him over the telephone?

A. Yes, I did.

Q. Will you state what you said to Mr. Green on that occasion, and what he said to you?

A. I asked Mr. Green what went on. I said, "We are losing all our men. What is wrong? And what goes on?" I think were exactly the words.

And he says, "I have them down here for a little meeting, and we have a job to do, just knock them off the pay roll and they will be back. It won't take long."

"Can you tell me what it is all about?"

He says, "It has nothing to do with your job."

So, with that—

219 Q. Was that the substance of the conversation?

A. That is the substance of the conversation.

Q. Did the men return that same day?

A. They did return.

Q. Do you know approximately when they began to return?

A. They started to return about eleven or a little after, and those that didn't return shortly before noon, were back right after the normal return for work after lunch that day.

Mr. Alexander: That is all.

Mr. O'Neill: That is all.

The Court: Cross-examination?

Mr. O'Neill: None, your Honor.

The Court: You may be excused.

(Witness excused.)

The Court: At this time we will be adjourned until tomorrow morning at 10:00 o'clock.

Remember the admonition of the court. Don't speak to anybody about this case—I mean discuss it with them. Try to avoid newspaper articles, and be back in your room at ten o'clock by ten o'clock tomorrow morning.

You may be excused.

220 The court may be adjourned until 10:00 o'clock tomorrow morning.

(Whereupon these proceedings in the above-entitled case were adjourned until the following day, Thursday, September 16, 1954, at 10:00 o'clock a. m.)

221 Before Judge Adair.

September 16, 1954,
Quincy, Illinois.

Court reconvened in the above-entitled cause at the hour of 10:00 o'clock a. m., September 16, 1954, pursuant to adjournment.

Present: Same as before, to-wit:

Mr. Alexander, Mr. Oxtoby, and Mr. Stoddart, appearing on behalf of the Government.

Mr. O'Neill and Mr. FitzGerald, appearing on behalf of the defendants.

222 JERRY W. BARTON, called as a witness on behalf of the Government, having first been duly sworn, was examined and testified as follows:

The Court: You may examine.

Direct Examination by Mr. Alexander.

Q. Will you state your name?

A. Jerry W. Barton.

Q. Where do you live, Mr. Barton?

A. I am living at Midland, Michigan, right now.

Q. Did you formerly live at Granite City, Illinois?

A. I didn't live at Granite City. I lived at Edwardsville. I worked at Granite City.

Q. By whom were you employed?

A. The Austin Company.

Q. What was the business, just a general description of the business, of the Austin Company?

A. General construction.

Q. In what capacity were you employed?

A. As general superintendent.

Q. Approximately how many employees did that company have who were under your supervision, say, in March and April of 1953?

223 A. Approximately 700.

Q. Were any of those employees laborers?

A. Yes, sir.

Q. Did the labor force have union affiliations?

A. Sir?

Q. Did the labor force employed there—were they unionized?

A. Yes, sir.

Q. Do you know what union?

A. Well, we employed members of practically all of the crafts, and building trades.

Q. I am just speaking of laborers.

A. Yes.

Q. Do you know what union?

A. The laborers union.

Q. Do you know where that local was, the general territorial jurisdiction of that local? Did it include Granite City?

A. Yes, sir.

Q. Now were you acquainted with any of the officers or representatives of the union?

A. Yes, sir.

Q. With whom were you acquainted?

A. With Mr. Green, who was the business agent.

224 Q. That is the defendant who sits here at the second table (indicating)?

A. Yes, sir.

Q. He was the business representative of the union?

A. Yes, sir.

Q. Now did the union have any other representative who was employed at your plant?

A. We had a steward who was appointed by the union to represent the people.

Q. Who was the steward?

A. Mr. Dale Skeen.

Q. Now during the time that you were employed, when questions involving the laborers arose, with whom would you discuss them? Who represented the laborers?

A. Mr. Skeen.

Q. On any occasions did you discuss such matters with Mr. Green, or did any such occasion arise?

A. Only such matters that Mr. Skeen was unable to make a decision, in himself a decision, it was referred back to Mr. Green.

Q. Then would you have discussions with Mr. Green on that same subject matter?

A. We had, yes.

225 Q. Were there any occasions when you had conferences on such matters with both Mr. Green and Mr. Skeen as representatives of the union?

A. I think we had discussed the jobs at various times with both of them, yes.

Q. Now do you remember an occasion in April of 1953 when the labor force at your plant left the plant sometime approximately around nine or nine-thirty in the morning, after they had begun work? Do you remember such an occasion?

A. Yes, sir.

Q. Well, now just tell us what you noticed about that, or what you found out about it.

A. Well, at first—

Mr. FitzGerald: If the Court please, I object to what he found out about it.

Mr. Alexander: I will withdraw that question.

Q. How did you know that the labor force left the plant? Did you see them go?

A. I didn't see them go. One of my field superintendents called me.

Q. And then you were informed about something happening?

A. He informed me that the—

226 Mr. FitzGerald: Object to what he informed you, Mr. Barton.

By Mr. Alexander: Not what he said.

Q. After he made that report to you, what did you do, if anything?

A. I contacted Mr. Skeen.

Q. Where did you get in touch with him?

A. By telephone in the plant.

Q. Was he still at the plant at that time, or did you have to get him some place else?

A. He was still at the plant.

Q. Now on that occasion, what did you say to Mr. Skeen and what did he say to you?

A. Well, I asked him what was wrong, why they were leaving the plant, if it was something that had taken place on our job.

And he informed me that it wasn't, it didn't have anything to do with us at all; and that they would be back, they would only be gone for a short time and they would be back.

Q. Did he say anything further about it?

A. Nothing more than they were going to a meeting and as soon as it was over, they would be back.

Q. Now can you tell us approximately how many of

227 your labor force left that morning?

A. Approximately 145.

Q. Can you state whether or not that was substantially all of the labor force then employed there?

A. Yes.

Q. What time would you say that they left the plant?

A. Oh, somewheres around nine-thirty—between nine-thirty and ten o'clock.

Q. Did they return?

A. Yes, they did.

Q. Can you state what time they returned?

A. Around noon.

Q. When these men left the plant that day, did they check out?

A. Yes, sir.

Q. That is, you had a time card system?

A. Yes, sir. They rang their cards out, yes, sir.

Q. Then when they came back, did they check in?

A. They rang them back, yes.

Q. What was the result of that on their pay for that day?

A. Well, their pay was stopped when their cards were rung out. They were docked for the time they were gone.

228 Mr. Alexander: I think that is all.

Mr. FitzGerald: That is all. No questions.

The Court: Call the next.

You may be excused.

(Witness excused.)

229 RAY EDWARD KOESTERER, called as a witness by the Government, after having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Oxtoby.

Q. Would you state your name?

A. Ray Edward Koesterer.

Q. Where do you live, Mr. Koesterer?

A. Granite City, Illinois.

Q. How long have you lived in Granite City?

A. Twenty-three years.

Q. Do you have any labor affiliations at the present time? Are you affiliated with any union organization?

A. I worked with the engineers.

Q. Operating engineers?

A. That is right.

Q. Speak up, please.

Out of what local?

A. 520, East St. Louis.

Q. During the first six months of 1953 did you work out of that local?

230 A. Yes, sir.

Q. What is the local?

A. Operating engineers.

Q. What is the number of it?

A. 520.

Q. Who is the business agent?

A. Frank Covert. I don't know how you spell it.

Q. Who was the business agent during the first six months of 1953?

A. Ralph Wright.

Q. Ralph Wright, Sr.?

A. Yes, sir.

Q. What kind of work do you do as an operating engineer, directing your attention to the first six months of 1953 only?

A. I ran a bulldozer.

Q. Had you had any prior experience in running a bulldozer?

A. Yes, sir.

Q. Where?

A. In the Marine Corps.

Q. You operated a bulldozer with the Marine Corps?

A. Yes, sir.

Q. When did you get out of the Marine Corps?

231 A. August, 1953.

Q. 1953?

A. 1952.

Q. All right.

Do you know a man by the name of Arthur Terry?

A. Is that the man that runs Terry Construction?

Q. Terry Engineering Company.

A. Yes, sir.

Q. Out of Missouri. Did you ever work for him?

A. Yes, sir.

Q. When was the first day that you went to work, approximately, for him, if you can remember?

A. I imagine around the 20th of March.

Q. Of what year?

A. 1953.

Q. Where did you work for him, what location?

A. On the levee at the Chain of Rocks canal.

Q. Is that in Madison County, Illinois?

A. I think it is.

Q. What kind of work were you doing out on the levee for Mr. Terry?

A. Running a bulldozer.

Q. Is that in construction or maintenance work?

232 A. I couldn't tell you. All I know, they just sent me out to run it.

Q. Well, tell the jury and his Honor in substance what kind of work you were doing with a "dozer".

A. Filling in washouts on the levee.

Q. In other words, the levee was already there, you were just filling in erosion?

A. Yes, sir.

Q. What kind of soil was the levee made out of, constructed of?

A. Sand pumped out of the canal.

Q. Any stumps or logs around?

A. No, sir.

Q. Brush to cut?

A. No, sir.

Q. A smooth surface except for the rivulets?

A. Yes, sir.

Q. How many days did you work on the levee?

A. Either four or five.

Q. Did anything unusual occur the first day that you were out on the levee?

A. No, sir.

Q. How about the second day?

A. No, sir.

233 Q. The third day?

A. No, sir.

Q. The fourth day?

A. No, sir.

Q. The fifth day, what happened on the fifth day? What day would that be, March 26th?

Mr. FitzGerald: Don't lead the witness.

Please let him testify.

By Mr. Oxtoby: Q. Approximately what day was it?

A. The last day you mean I worked?

Q. Yes.

A. It was the 26th.

Q. Of March?

A. Yes, sir.

Q. What year?

A. 1953.

Q. What occurred on that day, if anything, that was unusual?

A. There were six men come up.

Q. About what time?

A. Around ten o'clock in the morning.

Q. Did they come up to you?

A. No, sir, they was talking to the foreman.

Q. What is his name?

234 A. Clifton.

Q. What is his first name?

A. I couldn't tell you.

Q. Was he the foreman on the job?

A. Yes, sir.

Q. How many men were on the job besides the foreman?

A. Two.

Q. What was the other person's name?

A. Bill Fechte.

Q. What was the nature of Fechte's work?

A. He had a scoop and he dug dirt and put it up over the washouts that was on the levee.

Q. But he was engaged in the same general kind of work that you were on the levee?

A. Yes, sir.

Q. All right. Continue where you left off, when the six men came up and you saw them talking to the foreman, what happened next?

A. When I got up there, I stopped and asked them what was going on.

They asked me if I would stop the machine until they got the dispute settled.

Q. All right. What did you do?

A. Stopped the machine.

235 Q. Did you recognize any of the six men?

A. Yes, sir.

Q. Who were some of them?

A. Ralph Parmelee.

Q. Do you know how to spell that?

A. I don't know how to spell his name.

Q. Do you know where he lives?

A. Yes, sir.

Q. What is his address?

A. 25—241 East 95th, I think. I don't know for sure.

Q. Do you know what labor affiliation he had at that time?

A. He was working with the laborers out of Granite City.

Q. The laborers out of Granite City?

A. Yes, sir.

Q. Did you recognize any of the other men in the group?

A. No, sir.

Q. Did you know from what group they were?

A. No, sir.

Q. Directing your attention again back to the time just prior to the time you got off your "cat", did they tell you in a general way what the trouble was?

236 A. No, sir; they just said that they wanted this Mr. Terry to get a hold of their business agent.

Q. Did they ask you if you had certain persons attached to your equipment? Was there any question like that?

A. They asked me if there was a laborer with me, and I said no.

Q. Did you go back on the levee that day?

A. No, sir.

Q. Did you ever go back?

A. No, sir.

Q. That ended your association with Mr. Terry?

A. Yes, sir.

Mr. Oxtoby: That is all. Your witness, counsel.

Cross-Examination by Mr. FitzGerald.

Q. Ray, as I understand it, these six men came up there, they threatened you or anything like that?

A. No, sir, they never threatened me.

Q. They merely asked you if you would stop operating your machine until they settled the dispute?

237 A. Yes, sir.

Q. Now when they told you that, who did you immediately get in touch with, if anyone?

A. I didn't. The operator did.

Q. What was his name?

A. William Fechte.

Q. Bill Fechte.

A. Yes, sir.

Q. Were you informed of the conversation—I don't want you to tell me what you were informed—but were you informed of the conversation that he had with someone in connection with the Terry organization?

A. I didn't hear you, sir.

Q. Did you learn that Fechte—did Fechte tell you of what his conversation was with the Terry people or the Terry foreman, whoever he talked to?

A. We talked to the foreman ourselves, me and Fechte both.

Q. Oh, you talked to the foreman?

A. Yes, sir, he was right there.

Q. Did he tell you to do anything—any particular thing?

A. He told us to come with him up to this restau-

238 rant, right near the job. We went up there and he called this Terry. Terry wasn't at home, so he told us we might as well go on home.

Q. He told you to go on home?

A. He says there wouldn't be no more that day until he got a hold of Terry.

Q. Now Ray, you were operating a bulldozer, that is a tractor, earth-moving machine, is it not, Ray?

A. Yes, sir.

Q. Had you operated machines of that sort doing similar work before that?

A. No, sir.

Q. Had you ever operated bulldozers? When I say "similar work", I don't mean necessarily levee work, but removing earth.

A. Yes, sir.

Q. Was it customary in that area, if you know, that when such track-moving bulldozer was in operation that a laborer was employed to go along with that work to assist the person who operated the bulldozer?

Mr. Oxtoby: Just a minute. We object to that, assuming facts not in evidence.

Mr. FitzGerald: I am asking for a fact, if your
239 Honor please.

The Court: I think he is asking him if it was customary. Objection will be overruled.

By Mr. FitzGerald: Q. Do you understand the question, Ray? Was it the practice, the custom in that area to have a laborer with a bulldozer?

A. I rent them both ways, sir.

Q. Well, I am asking you—

Mr. Alexander: He is telling you.

Mr. Oxtoby: I think that answered the question.

Mr. FitzGerald: What? I didn't hear him.

Mr. Oxtoby: He ran it both ways.

By Mr. FitzGerald: Q. What was the practice, if you know it?

Mr. Alexander: He has told you what the practice is.

By Mr. FitzGerald: Q. In that area?

A. I only ran a dozer on three different occasions, and on the one they had swampers, it was building a levee; and the other job was working on slag, and we had laborers there; but they did work for you—but they
240 wasn't necessarily assigned to the machine.

Q. But they were working on the same work the bulldozer was doing, isn't that right?

A. Well, I mean they didn't stay with the machine. I mean I worked farther from them, but if I needed something, I asked them, they would get it.

Q. They would come to assist you?

A. Yes.

Q. Ray, remember you talked to Mr. O'Neill and to me some time ago over at Granite City?

A. Yes, sir.

Q. Do you remember my asking you at that time: "Isn't it customary when you work on that kind of a job to have a swamper?"

Mr. Alexander: Just a moment, unless he puts in there what kind of a job—

Mr. FitzGerald: Just a moment. I am reading this question.

And did you then answer:

"Yes, sir, it is customary."?

Mr. Oxtoby: We don't have the time. We got place, but we don't have the time.

Mr. FitzGerald: All right, I will give it to you. That was on the 20th of August of this year in the morning, 241 in the office of the laborers union in Granite City?

A. Yes, sir.

Q. Do you remember that? Did I ask you that question and did you give me that answer at that time?

A. I believe I did, sir.

Mr. FitzGerald: That is all.

Redirect Examination by Mr. Oxtoby.

Q. That type of work, the occasion when you did have a swamper was when you were engaged in construction work, was it not?

A. Yes, sir, building the levee.

Q. When you were working for Terry, you were not engaged in construction work, were you?

A. We was just filling those washouts, whatever they would classify that, I don't know.

Q. What would a laborer have done on the job you had with Terry, if you had had one? Would there have been anything for him to do?

A. I guess if you needed water or something for your machine, they would go get it.

Q. That is about all?

A. Fuel, they would get that and carry it to you.

242 Q. How big a tank does a dozer have, gas tank?

A. It is a fuel tank about 40 gallons.

Q. How often would a fuel tank like that need to be refilled?

A. Once a day.

Q. How do you fill a bulldozer?

A. Sir?

Q. How do you fuel a bulldozer?

A. How do you fuel it?

Q. Fuel it.

A. Just take the cap off the tank and pour it in.

Q. It is not a portable tank or anything that anybody has to carry, is it?

A. No, sir, you don't take the tank off to get it filled up.

Q. The truck drives up to it, does it not?

A. Sometimes, but usually they have barrels on the job.

Q. As an operating engineer, you have rules and regulations, do you not?

A. Yes, sir.

Q. There is nothing in your regulations, is there, that says that when men come up and tell you to leave, that

243 you should get off the bulldozer, is there?

A. No, sir, not that I know of. I wouldn't know.

Q. Tell the court and jury why you got off that bulldozer.

A. Six men come up and asked me to get off, so I got off.

Mr. Oxtoby: That is all.

Recross Examination by Mr. FitzGerald.

Q. Now Ray, the operating engineers is affiliated with the American Federation of Labor, is it not?

A. Yes, sir.

Q. And this labor union is also affiliated with the American Federation of Labor, isn't it?

A. I don't know. I imagine it is.

Q. Sir.

A. I don't know for sure, but I imagine that it is.

Q. Well, isn't it customary where there is a dispute as to which member of a labor union such as the engineers doing a particular work, or the laborers doing that particular work, that there is a conflict between the two unions, or jurisdictional dispute, that is usual, isn't it?

244 Mr. Alexander: To which we object.

Mr. FitzGerald: I have a right to ask that, your Honor.

Mr. Alexander: The only question asked the witness was in regard to their rule.

Mr. FitzGerald: You asked why he got off.

The Court: Just a moment, gentlemen. I think he may answer. Let him answer, if he knows.

The Witness: What is the question?

By Mr. FitzGerald: Q. There was a jurisdictional dispute as to who should do whatever work the laborer did on there, whether the engineers should do it or the laborer, isn't that right, when these men came up there?

A. When they came up to me?

Q. Yes.

A. They just asked me if I would stop the machine until Terry got a hold of their business agent.

Q. And until they had settled the dispute?

A. Yes, sir.

Q. That was a dispute as to who would do that work that was ordinarily done by a laborer?

Mr. Oxtoby: I object, assuming again facts not
245 in evidence, "ordinarily done".

The Court: Objection sustained.

By Mr. FitzGerald: Q. What was the dispute, as you understood?

A. They never told me what the dispute was.

Q. Well, as a labor union member, you did know it was a dispute as to whether they should do the work, that laborers ordinarily did, or that the engineer or operator should do that work, isn't that right, whatever work there was to be done ordinarily?

A. Yes, sir.

Q. You understood that, is that right?

A. I did not understand it. I mean, they just—like I said—they just asked me if I would stop until they got this thing settled. They didn't tell me what it was.

Q. You knew on that levee about the persons doing levee work that did have laborers with the bulldozers, didn't you?

A. I never worked on the levee, sir, except just that time.

Q. Did you see operation by a Masserman Company across the levee from you, across the canal from you that day?

246 A. No, sir, I never seen them. They was farther down.

Q. You didn't notice them?

A. No, sir. I seen some men working farther down.

Q. Well, you have told me that it was generally—when I first talked to you—customary for a laborer to be working with a bulldozer, that is right, isn't it?

A. Yes, sir, usually they do.

Q. Now those laborers were not in any way members of the engineers union at East St. Louis or any other place out of which you worked?

A. No, sir. These ones that come up to me?

Q. Well, Ray, when they asked you to stop, they did state because there was no laborer employed on that job?

A. Yes, sir.

Q. Now when you went to work on that job without any laborer, you didn't know what kind of weather you would run into, did you?

A. What kind of weather?

Q. Yes, sir.

A. No, sir, I wouldn't.

Q. Now if it had rained, what would have happened
247 to the track upon which this big machine was operating?

A. It would get full of mud, I imagine.

Q. Now ordinarily, whose duty was it to clean that track off?

A. The laborers'.

Q. If there had been a rain, even a brisk shower, it would have gummed up the track on the bulldozer, wouldn't it?

A. I imagine it would, sir.

Q. Well, you know it would, from your experience?

Mr. Oxtoby: Object to that as argumentative.

The Court: I can't hear all three of you at the same time, really I can't. If one of you makes objections, I would be glad to listen to you.

Objection is sustained.

Mr. FitzGerald: I feel inferior sometimes—

Mr. Oxtoby: What? With four counsel around, one, two three, four (indicating)!

The Court: Just a moment, gentlemen. Let's not make a farce of this. Let's try a lawsuit.

248 I have sustained the objection; go ahead.
Mr. FitzGerald: That is all.

Redirect Examination by Mr. Oxtoby.

Q. Did it rain?
A. No, sir.

Recross Examination by Mr. FitzGerald.

Q. Did you know it would not rain, Ray, after you started work?
Mr. Oxtoby: Object as being hypothetical.
The Court: Objection sustained.
Mr. Oxtoby: Counsel knows better!
(Witness excused.)

249 WILLIAM JOHN FECHTE, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Alexander.

Q. Will you state your name, please?
A. William John Fechte.
Q. Where do you live, Mr. Fechte?
A. 707 — 27th Place, Granite City.
Q. How long have you lived in Granite City?
A. This last time just about a year and a half.
Q. What is your occupation?
A. Operating engineer.
Q. How long have you been an operating engineer?
A. I have worked about five years.
Q. Are you affiliated with any union?
A. Yes, sir.
Q. With what union?

A. Operating engineers, Local 520.

Q. That is East St. Louis?

A. Yes, sir.

Q. Do you operate any particular type of machine,
250 or do you operate various kinds?

A. Various kinds.

Q. Of machines?

A. Various kinds.

Q. What are they? Will you tell us what kind of machines you have had experience in operating?

A. Well, backhoes, trench machines—

Mr. FitzGerald: Mr. Fechte, can't you speak a little louder? You look like a husky young man.

The Court: Speak a little louder. It isn't altogether your fault. This room is a little difficult to hear in.

The Witness: Backhoes, Barber Greene spreaders, rollers, trench machines, scoops, dozers. Hy-lifts.

By Mr. Alexander: Q. And you have had five years or more experience of that kind?

A. Approximately five years.

Q. Have you worked on a good many different kinds of jobs?

A. Yes, sir.

Q. Were you employed in March of 1953 by the Terry Engineering Company?

251 A. Yes, sir.

Q. When did you start to work for that company?

A. Well, I don't know the exact date. It has been so long ago.

Q. Well, how long did you continue to work for the Terry Engineering Company after you started?

A. Well, there was parts of two days. I went out one afternoon at dinner time and worked until about ten o'clock the next day.

Q. Now was there anyone else employed on the same job with you when you started to work for this company?

A. Yes, sir, there was.

Q. Who?

A. Ray Koesterer and his superintendent and mechanic for Terry.

Q. Who was that superintendent?

A. I don't know his name.

Q. Have you seen him here?

A. Yes, sir.

Q. What equipment were you operating during the time you spent on this job?

A. A scoop.

Q. Where were you employed—where was the site of the work that you were doing?

252 A. The job site—we was moving down the canal going south and it was approximately a thousand yards south of the bridge.

Q. When you speak of the "bridge", what bridge do you refer to?

A. That is the one—the bridge on 66, it crosses the canal.

Q. Then proceeds on toward the river and crosses the river and called the Chain of Rocks bridge?

A. Yes, sir.

Q. On what bank of the canal were you working?

A. On the east bank of the canal.

Q. On what side of the levee, on the east bank?

A. On the west side.

Q. That would be on the side closest to the canal?

A. That is right.

Q. Now on what part of the levee were you working?

A. I believe it is what they call the berm. It is the first rise in the levee.

Q. Is that a slope?

A. No, that is a flat surface where I was working.

Q. That is flat, and then the levee rises later?

A. Yes, sir.

Q. Just what were you working at? What work
253 were you doing on this job with this scoop?

A. I was taking up dirt off the berm and taking it up and depositing it along the main levee where there was washouts due to rain and the water that had washed the dirt out of the main levee.

Q. Was Mr. Koesterer working there at the same time?

A. Yes, he was.

Q. What was he operating?

A. A dozer.

Q. Just what was he doing?

A. He was leveling the dirt off that I had deposited along the levee to smooth off the levee, to cover up.

Q. Can you describe this dirt that you picked up a little more closely? What did it consist of, as far as you could see?

A. Well, it was dirt that had been pumped out of the canal and they had built the levee and they needed to take dirt from somewhere, and that was the most logical spot.

Q. I understand. Now can you tell us what, if anything, that you noticed about the dirt that you picked up in your scoop and carried up there? Was there any sand in it?

254 A. Well, it was a sandy soil. It was pumped out of the canal there.

Q. Now, is there a tractor in connection with the scoop?

A. Yes, sir.

Q. Does that tractor have a gas tank?

A. There is a gas tank and a diesel tank. You start it on gasoline and change over to diesel.

Q. How much diesel fuel would your tank hold?

A. I would say approximately 50 gallons.

Q. How long would that carry the machine in operation?

A. Between a day and a day and a half.

Q. And the gasoline tank, how much gasoline would the tank hold?

A. The gasoline tank would hold, I believe, a gallon.

Q. Now, you only used that when you started?

A. Whenever you start the motor.

Q. Whenever you start the motor?

A. Yes, sir.

Q. How often do you have to have a refill of gasoline, shall we say, in normal operation?

A. Oh, I would say about every two or three days.

Q. What was the weather during the time that you worked there?

255 A. I can't remember that long ago.

Q. Well, you operated that scoop and tractor all of one day, didn't you?

A. No, sir.

Q. Oh, I thought you put in one full day.

A. No, sir.

Q. The first day, how much time did you put in?

A. I came out at dinner time.

Q. And then worked how many hours?

A. I worked four hours.

Q. Now was the operation of the machine continuous—of the equipment continuous during those four hours?

A. Yes, sir.

Q. Did you have any stoppages of any kind in that first day?

A. Well, I stopped and got a drink, and talked to the engineer that was on the job.

Q. The engineer—you mean the government engineer?

A. Government engineer, the inspector.

Q. What was that talk about, about the work?

A. Well, I just asked him how deep I could cut to get my dirt.

Q. He had the direction of all of that work, didn't he?

256 A. Yes, sir.

Q. Where did you have to go to get the drink?

A. Up to the truck.

Q. How far was that?

A. Well, it was parked up on top of the levee.

Q. That was, I presume you drove your tractor up to that vicinity and then went up?

A. Yes, sir.

Q. How far was it up there, approximately?

A. Oh, about 150 foot.

Q. Then you returned to your machine?

A. Yes, sir.

Q. And that occurred once in the four hours?

A. Well, I don't know.

Q. Well, as well as you remember, how often did you do that?

A. I would say at least two times in that length of time.

Q. Now were there any other interruptions in your work?

A. No, sir, not that day.

Q. And you returned to the job the next morning?

A. Yes, sir.

Q. What time did you report on that day?

257 A. Seven-thirty in the morning.

Q. How long did you continue to work that day, approximately?

A. Approximately ten o'clock.

Q. Now were there any interruptions that day in your work up to the time that you—up to ten o'clock?

A. Not until around ten o'clock.

Q. Did you have to refuel that morning?

A. No, sir.

Q. Or get any new supply of gasoline?

A. Not that morning.

Q. Was there any other occurrence that stopped your machine for any appreciable period of time?

A. No, sir.

Q. Now this machine as it moves along picks up the earth in a scoop?

A. Yes, sir.

Q. Then you raise the scoop a little and go up to where you want to deposit the earth?

A. Yes, sir.

Q. Then you dump the scoop?

A. Yes, sir.

Q. And that is all automatic, by use of levers and the power of the machine, isn't it?

258 A. Yes, sir.

Q. Mr. Fechte, will you look at Government's Exhibit 4, which is Defendant's Exhibit 1, and state if the nature of the surface there is approximately of the same general character as it was on the occasion when you worked there?

A. Well, from the picture up here close, I would say no; but farther down, I don't know about that because I can't see it that good.

Q. Well, what difference do you notice in the character of the site of the work as of the time you were there?

A. Well, up here in the front part of the picture here, it would be grass. It is not quite as high there as I remember.

Q. In other words, the grass was not as high when you were there working as it appears in the picture, is that correct?

A. I would say no.

Q. You have also had experience operating a bulldozer?

A. Yes, sir.

Q. There was a bulldozer working there that morning?

A. Yes, sir.

Q. And the difference between this work was that

259 instead of scooping the dirt up, it pushed it along ahead of it and evened off the crevices?

A. Well, he pushes—he was pushing dirt ahead of him, and he was also dragging it back.

Q. To accomplish what purpose?

A. To level the dirt off that I would dump.

Q. Now the operation of a dozer would be carried on under approximately the same conditions that the scoop would be operated otherwise, would it not?

A. I don't understand that.

Q. Well, the dozer is another mechanically-operated machine?

A. Yes, sir.

Q. And as far as the tractor part of it, is it substantially the same—is the tractor that operates—the same as the tractor that operates the scoop?

A. Yes, sir, except the dozer had a blade on the front of it and the tractor that I was running didn't have.

Q. Otherwise, the two tractors would be the same, approximately?

A. Approximately.

Q. How about the size and power, would they be
260 about the same?

A. I believe they were.

Q. And the problems in the operation of the two would be approximately the same, would they not?

A. Well, they are in the general vicinity of the same, but he has to push and pull the dirt, and I have to pick it up, scoop it and pick it up and carry it to where I wanted to put it.

Q. Yes. What I mean, Mr. Fechte, I am referring to the problems that would arise in that kind of work, that the operator would have to solve with respect to the care of his equipment, refueling and things of that nature, they would be approximately the same, wouldn't it?

A. Yes, sir.

Q. Now on this second day that you were working, did something occur there in the morning about ten o'clock?

A. Yes, sir.

Q. What was the first thing you noticed?

A. Well, I was working a little way ahead of the dozer, and as I was making my round there to bring dirt up, why, I seen some fellows up there talking to him, and I just kept right aworking.

261 Q. What happened then?

A. Well, I think I made a couple of passes there, picking up and depositing my dirt, and Ray Koesterer—he came down with another fellow, and this other fellow—he asked me if I would stop my rig because they had an argument, they would like to have settled.

Q. Did you know this man?

A. Well I thought I had seen him on another job, but I didn't know him by name.

Q. Do you know him by name now?

A. No, sir.

Q. Can you describe him? Do you remember his appearance? Can you tell us a little about his appearance?

A. Well, I wouldn't have recalled it until you read that statement this morning.

Q. That is a statement you had given to an Agent of the FBI at one time?

A. Yes, sir, because I had more or less forgotten about the little incident, because it had happened so long ago.

Q. You wouldn't have an independent recollection of it then, of the appearance of this man?

262 A. No sir.

Q. I see.

Now, did he say anything about who he was?

A. No, sir.

Q. Did he say anything about who he was representing?

A. No, sir.

Mr. FitzGerald: Bob, be careful will you, please? You make comments, and I do not want to be involved in a squabble with you.

By Mr. Alexander: Q. What did you do?

A. When he asked me to stop the rig?

Q. Yes.

A. I stopped it.

Q. Then what did you do?

A. I took it over and parked it, and we left.

Q. Where did you go?

A. We went up to a dinner up on the highway.

Q. Who was with you?

A. Ray Koesterer and the superintendent.

Q. What happened then?

A. Well, we stayed around there until a little bit after dinner time and we went home. He asked the superintendent—the superintendent asked us if we would stay there
263 for a while, and we said yes, and then we left, when he told us to leave.

Q. Now is there any rule of your union that requires you when a stranger comes to you on a job and just asks you to stop, to stop the work for your employer?

A. No.

Q. Well, why did you stop?

A. If it was one individual, I wouldn't have stopped. I would have questioned it a little bit. But there was—oh, five or six fellows that was up on the berm or up on the top of the levee, and he asked me to stop, and I just let it go through my mind what could have happened, and I stopped.

Mr. FitzGerald: Now, if the Court please, I object to what went through his mind, what could have happened.

Mr. Alexander: This is state of mind.

Mr. FitzGerald: Just a moment, please.

The Court: No, I think it may stand. Objection is overruled

By Mr. Alexander: Q. Do you know what a swamper is, Mr. Fechte?

A. Yes, sir.

264 Q. That is a laborer who on construction projects assists the operator of the mechanical equipment?

A. It is just not the laborers.

Q. I don't understand.

A. It is just not the laborers, there is other crafts that we work with.

Q. But there is one craft, and they are known as "swampers" and generally they are members of what is known as the common laborers union, isn't that right?

A. No, sir, because whenever I am on a job where there is another craft to work with me, I also call him my swamper.

Q. I see. I probably don't know the technical features of it. But was there any work for a swamper to do in connection with your operations for Mr. Terry?

A. I don't believe there was with the rig that I was running.

Q. How about the dozer?

A. There could have been work for a swamper on that, I believe.

Q. What could it have been?

A. Well, when you are sitting up on a piece of machinery like that, moving dirt and trying to find those
265 holes, and there is grass growing, sometimes it is hard to find them spots and you don't know how deep they are, you don't know how much dirt to carry up to them to fill them.

Q. And he takes the advice of the swamper?

A. Yes, sir, because he is down on the ground where he can see those better than you are sitting up on the machine.

Q. Well, what other work would he do on a job like that?

A. Well, he—they clean dirt and stuff off the "cats" when it is filled up—when they have to be cleaned,

Q. Clean dirt from the what?

A. From the tracks on the machine.

Q. The tracks of the tractor?

A. Yes, sir, where you are—oh, there are—your wheels where you are—where your bushings are and your wheels that keep the tracks on from jumping.

Q. Well, your tractor was the same as his, was it not?

A. Yes, sir.

Q. You didn't have to clean the tractor wheels in
266 that kind of soil, did you, that day, or those days?

A. Well, there wasn't a lot of dirt to be picked up on them.

Q. It was sandy soil, it just fell off, didn't it?

A. Well, a certain amount of it would fall off.

Q. How deep were those holes that were being filled up, these eroded places?

A. Well, they would vary anywhere from an inch or two, maybe to six inches, maybe deeper.

Q. Was it your idea that the swamper could have gone ahead of the machine and signaled up "This fissure is six inches deep," or "This one is two inches deep." Is that right, that that would be the work of the swamper?

A. Well, he could have told him. He would look, he could be looking for the spots where there is—there was places along the levee where there wasn't no dirt needed, but to find those spots, the operator would probably have to get off and look on the ground when he would be taking up time.

Q. On the other hand, he could walk over that same ground and survey it before he started his operations
267 and know approximately what had to be done, could he not?

A. Yes, sir.

Mr. Alexander: I think that is all.

Cross-Examination by Mr. FitzGerald.

Q. Say, Bill, this operation of the Terry Engineering Company there by you and Mr. Koesterer, that was a unity operation, was it not? That is, you and he worked together, you would dig the earth out and take it up to where it should be in the erosion channels or the little runs in the levee, deposit it and he would level it off?

A. Yes, sir.

Q. Now both of you operated track machines, your machine was on a track just the same as the bulldozer was, was it not?

A. Yes, sir.

Q. Isn't it true generally in the operation of all track machines that many things will gum up the track upon which the machine runs?

A. Yes, sir.

Q. Now the laborer, if there were a laborer on that
268 job, he would attend to any difficulty that you as the operator of this scoop machine, or the fellow with the bulldozer had with his machine, is that not right?

A. Would you repeat that again?

Q. I say: If there were one laborer on that job, he would attend to any trouble that you had as well as any trouble that the bulldozer had in the operation of them?

A. Yes, sir.

Q. He would run whatever errands there were?

A. Yes, sir.

Q. He would also go over the ground, and if there was trouble here or trouble there, which the bulldozer or you should care for, he would advise you of it if there was a hole here or the deeper hole there that could be seen from the machine, he would tell you and tell the bulldozer, or signal to you about it, wouldn't he?

A. Yes, sir.

Q. Now was it or was it not customary in such a unit operation to have a laborer there on the job?

A. Well, I don't know. I had never worked with a dozer like that before. I mean with the scoop depositing it
269 and the dozer leveling it off.

Q. Well, was it customary where a tractor dozer was involved to have a laborer accompanying him?

A. On certain kinds of jobs, yes.

Q. Do you know whether is was customary in that area where there was a unit job on both a scoop and dozer to have a laborer?

A. Yes, sir.

Q. Was it?

A. Yes, sir.

Q. Now Mr. Alexander has asked you if the operator of the bulldozer could not get off of his machine and stop the operation of the machine and make the same survey of ground so as to know what things to avoid and what to do. You understood him asking that of you, did you?

A. Yes, sir.

Q. During all of the time that he did that, that machine would be idle, would it not?

A. Yes, sir.

Mr. Alexander: That just calls for a conclusion. That is obvious.

The Court: He may answer.

270 Mr. FitzGerald: Mr. Alexander, if I want any comments from you, I will ask for them.

Mr. Alexander: It was an objection addressed to the court.

Mr. FitzGerald: I didn't understand there was an objection to it.

Mr. Alexander: Well, I did object. The ground is that it is just an obvious conclusion.

Mr. FitzGerald: Will you please stop, or I will have to ask the court to stop you.

Mr. Alexander: I still make my objection.

The Court: Have you made an objection?

Mr. Alexander: Yes, I made an objection.

The Court: Objection is overruled. Now go ahead.

By Mr. FitzGerald: Q. When these men came up there, the men that talked first to Mr. Koesterer and then after, there was one of them with Koesterer that came over to where you were on the scoop?

A. Yes, sir.

Q. Well, when they came over, were there any 271 threats of any sort made?

A. No, sir.

Q. This fellow who came over there at that time, did he tell you there was a dispute about whether or not a laborer should be employed?

A. No, sir.

Q. Do you recall just what he did say?

A. To the best of my knowledge, he come up and told me that they had a little argument they wanted to get straightened out and asked me if I would shove my machine down.

Q. What did you say to him?

A. I told him yes.

Q. Do you remember my talking to you—and to refresh your recollection, that was over at the Labor Building in Granite City on, I think, the 3rd of this month, September 3rd, was it not?

A. I believe it was around that time.

Q. What is the date, Ray? I get all mixed up in my time. About two weeks ago, wasn't it?

A. It was a Friday before Labor Day.

Q. Yes. Well, that would be two weeks ago tomorrow, or from tomorrow. I remember at that time—

Mr. Oxtoby: Who was present, time and place who was present?

272 By Mr. FitzGerald: Q. You were present and a Mr. Otto Boyle took down your statement, Mr. O'Neill, and I am not sure whether Mr. Green was there or wasn't there. Do you remember whether he was or not?

A. I believe he was.

Q. Was there anyone else there that you recall except the ones I have mentioned?

A. That is right.

Q. Well now, at that time do you remember telling me about it, that you told me of a talk that you had with an FBI man? Do you know who that FBI man is?

A. No, sir.

Q. Do you see him in the court room?

A. Well, I don't know if it would be him or not (indicating). It has been quite a while since he has talked to me.

Q. You told me in that conversation that he asked you if there had been any threats made, and that you told him that there had been none.

Mr. Alexander: Now we object to that. There is no tendency to impeach—

Mr. FitzGerald: I have a right to do so.

The Court: We would like to see what the ques-
273 tion is. Then I will accept your objection.

By Mr. FitzGerald: Q. Is that right?

The Court: Is that all of the question?

Mr. FitzGerald: No, sir.

Mr. Oxtoby: If your Honor please, the jury hears all this if it is improper.

The Court: I realize that.

By Mr. FitzGerald: Q. (Continuing.) And he then said, "Well, even if they didn't get threatened—threaten you" this in substance, "would you quit?"

And you said, "Yes, even if they didn't threaten."

"If I didn't threaten you or nothing," you are referring to and you said, "Yes".

And then you said, "I ain't going to argue with no body. I don't care if it would be just one fellow on the job or if I got into a dispute on the job. I am going to shut off my rig."

Do you remember telling me that?

A. I don't know. I can't remember saying just one fellow.

Q. You don't remember that?

274 A. No, sir.

Q. You may have said it?

Mr. Oxtoby: Object to that as argumentative.

Mr. FitzGerald: I think I have a right to ask him that.

Mr. Oxtoby: He said he didn't.

The Court: Objection sustained. You have asked, and I think he has covered it. He said he didn't remember.

By Mr. FitzGerald: Q. Say, Ray, about that soil that was there on the berm—Bill. Excuse me, I was thinking of Ray Koesterer.

(Continuing.) That soil that was on the berm, was it sand and silt, or silt, loam mixed in it? It wasn't all pure silica sand, was it?

A. Well, I don't know that much about dirt. It was sandy soil.

Q. Well, all that area in the vicinity of Granite City is a sandy kind of a soil, isn't it?

A. I believe it is.

Q. Where is your home? Where was it before you moved to Granite City?

A. In Madison.

275 Q. You lived in that area for some time?

A. About two years.

Q. Sir?

A. About two years in Madison.

Q. Where did you live before that?

A. In Venice.

Q. Well, is that all in that district between East St. Louis and Edwardsville and Alton, in through that area?

A. Yes, sir.

Q. Has that been your home most of your life?

A. Yes, sir, I have lived in that neighborhood most of my life.

Q. You are generally acquainted with the soil around the river there, aren't you?

A. Yes, sir.

Q. This was the same type of soil you found wherever there was a river, near a river?

A. I would say yes.

Q. Well now, do you know, did you do any work on the building of that canal except at the time that you went to work for Terry?

A. I oiled—I was an apprentice to an operator when they was pouring concrete for the locks themselves.

276 Q. That was after the canal itself had been done?

A. No.

Q. Hadn't the canal been dug before they put the concrete in for the locks?

A. They had, to the best of my knowledge, they had come in and dredged out a place where the canal was going to be and pumped the water out and built it in there, and then later on they come through with the canal.

Q. The water that was in there, that surface water which is over most of the area right around the river, that they pumped out of the canal, they hadn't opened the locks but they had shut off the water from the river while they were building the canal, hadn't they?

A. Yes, sir.

Q. How did you happen to go to work for Terry, Bill?

A. Well, I had finished up one job in the morning and I stopped by our local, and they asked me if I would like to make the rest of the day, and I told them yes, and then they sent me up there for Terry.

Q. Were you told anything at that time about why they wanted you to go up to Terry?

277 A. No, no. Just there was no operator on the machine and they wanted me to go up and run it.

Q. Weren't you then told, "Well, go on up there. They have got a mechanic on the place."?

Mr. Alexander: Just a moment. We object to this conversation.

Mr. FitzGerald: Please let me ask the question.

The Court: Let's get the question first.

Mr. Alexander: I want to make an objection.

The Court: Let's get the question first.

Mr. Alexander: I want to make the objection that here we are having a conversation.

The Court: Go ahead with the question, and then we will take care of it.

By Mr. FitzGerald: Q. "Well, go up there. They got a mechanic on the rig. Tell them you are going to take his place and don't let him run it."?

Mr. Alexander: We object to the question.

The Court: Who said that? Who was supposed to have said that?

Mr. FitzGerald: The man who sent him up to the job.

The Court: Objection sustained.

278 Mr. Alexander: We move that the statement of counsel be stricken and the jury be instructed to disregard it.

The Court: The question may be stricken.

By Mr. FitzGerald: Q. Do you know if anyone had been running that machine in the morning of the day you went up there?

A. The mechanic and the superintendent had been running it.

Q. Were they members of your local?

A. No.

Mr. Alexander: To which we object as immaterial.

The Court: Objection overruled. He may answer. He has answered it, I believe.

Mr. FitzGerald: That is all.

The Court: Any other questions?

Mr. Alexander: Yes, your Honor.

Redirect Examination by Mr. Alexander.

Q. Now Mr. Fechte, can you tell us some of the jobs you worked on with this kind of equipment prior to this incident? Just we understand you were an appren-
279 tice during the time the lock was being built.

A. Yes, sir.

Q. Now was it subsequent to that that you joined the union and became an operating engineer?

A. Yes, sir.

Q. And a skilled operator?

A. Well, I am still under apprenticeship now.

Q. Oh, you are still an apprentice?

A. Yes, sir. When I was working on the canal on the locks, I was an apprentice; but now I have my apprentice card. You have to show yourself that you are able to do the work to get your apprentice card.

Q. Then how long does the apprenticeship last?

A. Approximately three years.

Q. When will your time be up?

A. About a little over two years from now.

Q. Can you tell us some of the jobs you have worked on with that equipment?

A. Well, they had—I have never—I haven't been on the job working right alongside of them. I have been on the job where the equipment has been running, but
280 that is not my particular field of construction work.

Q. Oh, you are a construction man. Am I right

in that? You are a construction man, a construction worker?

A. We cover construction work and road work and all new construction of any kind.

Q. Well, has your past experience been mostly in construction work?

A. In road.

Q. In connection with this trade of yours?

A. Yes.

Q. Can you tell us some of the jobs you worked on?

A. Well, I have worked on the power house in Wood River.

Q. The what?

A. The power house in Wood River.

Q. What kind of construction work was that?

A. Well, they was building a power house. There was all phases of construction that I know of up there.

Q. Did you operate heavy equipment on that job?

A. No, sir.

Q. What was your work?

A. I was an apprentice learning. I was oiling on a crane.

281 Q. I see. Keeping up the equipment?

A. Yes, sir.

Q. Were there any dozers on that job?

A. I believe there were.

Q. What were they? Do you remember what they were doing?

A. No, sir, because we weren't working near them.

Q. So you didn't see what the dozer equipment was doing on that job?

A. No, sir.

Q. Now what other job, do you remember?

A. I can't think offhand of any right now, I mean.

Q. Before you went out to join Mr. Terry—had you

ever worked on a job such as scooping of dirt and unloading it as an operator of a machine?

A. No, sir, not on that particular machine.

Q. You had not. Well now, any other machine with the same kind of work, had you ever done that?

A. How do you mean, "any other machine"?

Q. Well, what I am trying to get at is to find out something about your past experience, your experience with scoops and dozers before you went to work for Mr. Terry.

A. Well, I have worked on dozers and Hy-lifts.

282 Q. Well now, can you tell us some place that you worked on dozer?

A. No, sir. I haven't work—run one of those in the last three years I know of. I work on so many jobs that it would be hard to recall.

Q. Do you remember any job on which you operated a scoop?

A. No, sir.

Q. Well, was your answer to Mr. FitzGerald when you said it was the custom to always have a swamper working with a dozer, was that based on your experience with dozers?

A. Well, being around them and not particularly working on those machines, but being around machines that I was working on, they was working by them, yes.

Q. All right. Now can you tell us some of the jobs that you had made those observations on?

Mr. FitzGerald: Object, if the Court please. This is their witness.

Mr. Alexander: Of course it is.

Mr. FitzGerald: I am objecting to this. This is cross examination. It is not redirect.

283 The Court: That isn't leading. Could you tell us what jobs they were? I don't think that is leading. He may answer that.

The Witness: Well, there was a job up on the river

in Wood River north of the power house up there, where they had dozers working when I was oiling on a crane.

Q. What were those dozers doing?

A. They was clearing timber.

Q. Yes, and they had a swamper there?

Mr. FitzGerald: Now please, I object to counsel interrupting the witness.

Mr. Alexander: I will withdraw it. All right.

The Court: It is leading.

Mr. Alexander: I will admit that it was leading in form, your Honor.

Q. What were the swampers doing with respect to the work of the dozers?

A. Well, they were pushing up trees so they could burn them, and he was there to see that no big tree—no big limbs or nothing got up under the dozer.

Mr. Alexander: I think that is all.

284 The Court: Anything further of this witness?

Mr. FitzGerald: That is all.

The Court: You will be excused.

(Witness excused.)

The Court: We will take a recess for ten minutes. The jury may retire.

(Whereupon a recess was had.)

The Court: Call the witness, gentlemen.

285 **BERNIE CLIFTON, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:**

The Court: You may examine.

Direct Examination by Mr. Alexander.

Q. What is your name, please?
A. Bernie Clifton.
Q. Where do you live, Mr. Clifton?
A. Menfro, Missouri.
Q. What is your occupation at the present time?
A. Unemployed.
Q. Were you formerly employed by Mr. Terry?
A. Yes, sir.
Q. Mr. Arthur Terry, Jr.; is that his name?
A. That is his name, yes, sir.
Q. How long were you employed by him?
A. Approximately three years.
Q. Beginning when?
A. October 31 of 1951.
Q. In what capacity were you employed?
A. As a foreman, sir.
Q. You were what?
286 **A. A foreman.**
Q. Did you at any time work on a job that Mr. Terry had over on the Chain of Rocks canal, the levee?
A. Yes, sir, I did.
Q. Can you tell us approximately when that was?
A. I believe it was in March of 1953.
Q. How long in all did you work on that job?
A. Work on that job, two and one-half days, I believe.
Q. Will you speak a little louder?

A. Two and one-half days.

Q. It is awfully hard to hear in this room.

A. Two and one-half days.

Q. Do you know the date that you went to work there?

A. On that particular job it was March of 1953, but the exact date I don't believe I remember, not the date.

Q. Now the first morning that you went to work there, what equipment was Mr. Terry using on that job?

A. Two tractors, a dozer and a scraper.

Q. Do you remember who the operators of the equipment were, any of them?

A. Mr. Fechte.

Q. Mr. William Fechte?

A. Yes, sir. And the other boy's name I forgot 287 right at the time.

Q. Was it Ray Koesterer?

A. It was. That was his name, that is right.

Q. Now this first day, did you work all day?

A. Well, we were late in getting started, but we did put in the day, yes, sir, the entire day.

Q. The next day, did you put in a full day?

A. Yes, sir.

Q. Then the next day, did you put in a full day?

A. No, sir.

Q. How long did you work that day?

A. About two hours.

Q. Approximately where were you on the levee? Can you tell us?

A. About 500 to 700 feet south of the Chain of Rocks canal.

Q. On what bank of the canal, the east or the west bank?

A. We were on the east levee, east of the canal.

Q. On what side of the levee were you working your equipment?

A. On the west side of the levee.

Q. That was closest to the canal proper?

A. To the water, yes, sir.

288 Q. On what part of the levee were the machines working?

A. They were working on the berm.

Q. Now did anything occur there in the morning, any people come to the place where you worked?

A. Yes, they did.

Q. Well now, will you tell us about that? Where were they?

Mr. FitzGerald: What morning?

By Mr. Alexander:

Q. This morning when they didn't work all day, the third day, wasn't it, that you were on the job?

A. Yes, sir, the third day.

Q. Was Ray Koesterer operating machine that morning?

A. Yes, sir.

Q. And also Mr. Fechte?

A. That is right, yes, sir.

Q. Now where did you first see these people that came to the site of your work?

A. Well, I saw them when they came down here in machines. I didn't pay any attention to the machines because—

Q. Machines—what kind of machines?

A. Automobiles.

289 Well, when they came up the levee, that is when I knew they came to our job, when they came up the levee.

Q. From what direction did they come?

A. I believe they came south—came from the north.

Q. Where was the bridge with respect to where you were, north of you or south of you?

A. Yes, sir, it was north of where we were working, yes, sir.

Q. All right. Now after they came there, did you notice them park their cars?

A. Yes, sir, they did park their cars.

Q. How close to the site of the job?

A. Down on the road at the foot of the levy, it is an old road, I don't know the name of the road, but they parked their machines on the road.

Q. Now there is also a road on top of the levee?

A. Yes, sir.

Q. Which road did they come into the job site on?

A. They came down the old road. They didn't come down the top of the levee.

Q. They didn't come down the levee road?

A. No, they didn't. They came down the road.

Q. Where does that old road lead to?

290 A. I don't know where it leads to.

Q. In what direction, standing on the levee, what direction do you look along that road?

A. Well, the levee runs parallel with the road. The old road down at the foot—

Q. It runs parallel?

A. Parallel, yes, sir.

Q. I see. Now how close were you at the time these men came down, came to where Ray Koesterer and Fechte were operating their machines?

A. Within 200 feet, I suppose.

Q. All right. Now just explain in your own words what happened after those cars came.

A. Well, these tractors were operating up and down the levee. They came down. At times I was 200 feet of them, sometimes I was 500 feet.

Q. What did these parties that came there in cars do?

A. Well, they came up there and talked to the operators. I don't know what they told them, I didn't hear it.

Q. You weren't near enough to hear it?

A. No, I didn't hear that.

Q. What did you see happen there?

291 A. Well, the operators quit, shut off their machines and they came up there to where I was and they said that—

Mr. FitzGerald: Just a moment. I object to what was said.

The Court: That is right.

By Mr. Alexander: Q. Who came up to where you were?

A. Well, the men, I don't know who they were or where they came from.

Q. How many of them were there?

A. Six, eight, ten, I don't remember exactly. I didn't count them.

Q. Well now, did Mr. Koesterer come up there?

A. Yes, he did.

Q. With them?

A. Yes, sir.

Q. Did Mr. Fechte come up there?

A. Yes, sir.

Q. All right. Now what happened when they call got to where you were?

A. Well, they told me that they wanted to put a swamper on those tractors, and I told them I didn't have the authority to hire one, they would have to take it up with Mr. Terry.

292 Q. Then what was said?

A. Well, they said they would shut the job down so I did, I sent my two operators home and told them I would call them when we were ready to go back to work again after this thing was settled.

Mr. Alexander: I think that is all. Just one moment.

Q. Did you know any of these men?

A. No, sir, I didn't. No, sir.

Q. Did they tell you who they represented?

A. No, they didn't.

Q. Did they tell you who sent them?

A. No, they didn't.

Mr. Alexander: I think that is all.

Cross-Examination by Mr. FitzGerald.

Q. Mr. Clifton, as I understand, both Mr. Fechte and Mr. Koesterer had shut their machines down and gotten off of them. Had they moved them from the place that they were operating them before they left the machines?

A. No, they did not.

Q. Just stopped there and then came with these 293 men up to you?

A. Those tractors stayed there as far as I know, those tractors weren't moved. The operators stopped them and let them stay right there at the spot.

Q. Did Fechte and Koesterer make statements to you at the time these other men were there?

A. No, sir, they didn't.

Q. Are you a union man, Mr. Clifton?

A. Beg your pardon, sir?

Q. Are you a member of the union?

A. No, sir, I am not.

Q. Had you been working on one of those machines there before Mr. Fechte arrived?

A. I did, yes, sir.

Q. Operating?

A. Yes, sir.

Q. Mr. Clifton, had you ever done any work in the area of that levee in that canal construction before you went there on the job with Mr. Terry?

A. No, sir, I did not.

Q. There were no threats made by any of those men to you at any time, were there?

A. Not to me, no, sir, no threats of any kind made to me.

294 Mr. FitzGerald: That is all.

The Court: Is that all of this witness?

Mr. Alexander: I think that is all of this witness.

The Court: You are excused.

(Witness excused.)

295 HARRY L. VOYLES, called as a witness on behalf of the Government, having first been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Alexander.

Q. What is your name?

A. Harry L. Voyles.

Q. Where do you live, Mr. Voyles?

A. 257 South 27th Street, Belleville.

Q. What is your occupation?

A. Operator.

Q. Of what?

A. Well, tractors and bulldozers.

Q. Heavy equipment?

A. Heavy equipment.

Q. What is normally known as earth-moving equipment and construction equipment?

A. That is right.

Q. Are you a union man?

A. No, I am a permit man out of 520.

Q. What do you mean by a permit man?

A. Well, I don't belong to the organization, see. In other words, I work on a permit. I pay the same

296 union dues that the operators pay.

Q. You received your permit from what union?

A. 520, the operator engineers of East St. Louis.

Q. That is located at East St. Louis, Illinois?

A. That is right.

Q. How long have you worked under a permit from that union?

A. About five years.

Q. How much experience have you had in operating this heavy equipment, how many years?

A. Oh, on and off for thirty years, I guess.

Q. Were you ever employed by a Mr. Terry operating the Terry Engineering Company?

A. Yes, sir.

Q. Can you tell us when you went to work for him?

A. Well, it was in April. I think it was the 13th or the 14th.

Q. Of what year?

A. Last year.

Q. Of 1953?

A. Yes, sir.

Q. At that time did you know Mr. Terry?

A. No, I did not.

Q. What time did you go to the site of this job?

297 A. About 7:30 in the morning.

Q. Approximately where was the work site?

A. Well, about two miles from Mitchell, Illinois.

Q. From Mitchell, Illinois?

A. In Madison County.

Q. Are you familiar with the bridge that crosses the Chain of Rocks canal, as a part of Route 66, are you familiar with that bridge?

A. I wouldn't know the name of the road where I turned off at Mitchell.

Q. Well, is there a bridge that crosses the canal?

A. Yes, sir.

Q. Where did you go with respect to that bridge, on what side?

A. I—right there at the bridge was where I picked up the equipment.

Q. At the bridge, you picked up the equipment?

A. Yes.

Q. What equipment did you pick up there?

A. It was a D. T.—14 and a scoop.

Q. Did you have a tractor to operate the scoop?

A. Yes, sir.

Q. Is that a diesel tractor?

A. Yes.

298 Q. Was it in operating condition when you arrived there?

A. Sir?

Q. Was it in operating condition when you arrived there?

A. The tractor was, but the scoop wasn't.

Q. What was the matter with it?

A. Well, there was a couple of bolts out of it, and I had to go to Mitchell to get some to fix it.

Q. How long were you gone?

A. Oh, I guess half an hour or an hour, until I got back.

Q. Was there anyone at the site of this job when you arrived?

A. Mr. Terry, and there was the man I reported to.

Q. Whom you reported to, Mr. Terry?

A. Yes.

Q. Was there anyone with him at that time, do you remember?

A. Well, there was two fellows there, but I didn't know them.

Q. You didn't know who they were?

A. No.

Q. Now then, you went to Mitchell and returned.
299 About what time did you get back?

A. Oh, I guess at nine, nine o'clock, after I got the bolts.

Q. Well now, what did you find when you got back there, who was present?

A. Well, there was one man with Mr. Terry, and he told me to go to to perform the work and what he wanted done.

Q. Was he the government inspector, do you know?

A. Well, I wouldn't know the man.

Q. You don't know who it was?

A. No.

Q. Then you went to the site where you were to work?

A. That is right.

Q. Driving the tractor and scoop there?

A. Yes.

Q. Was the tractor all fueled up ready to go?

A. Yes, sir.

Q. How far did you have to go where you were to do this work?

A. Well, I guess approximately half a mile.

Q. Were you that far from where Mr. Terry was, or did he come down to where you were working, do you know?

300 A. Well, he told me where to go and what to do, and what he wanted done, so I just went down there and started hauling dirt.

Q. What was the work you did there?

A. Well, wherever there was a wash in the levee, I was to pick up a load of dirt off of the berm next to the river and haul it back to the levee.

Q. Now is the operation with the scoop of that tractor approximately the same as the operation of a dozer that pushes the earth ahead of it?

A. No.

Q. What is the difference?

A. Well, a dozer has got a blade on the front, and a scoop you pull.

Q. But otherwise, the actual operation of the equipment is approximately the same?

A. It is approximately the same.

Q. The same kind of tractor, isn't it?

A. A lot of them is different. They got all kinds of models of tractors.

Q. Different kinds of models, but overall you can put a tractor—a scoop on a tractor and use it as a scoop, then the next day you can put a blade on it and use it as a dozer, can't you?

301 A. That is right.

Q. That is the way they do use that equipment?

A. Yes.

Q. When you are operating one of these tractors as a bulldozer or a scoop, how high above the ground are they?

A. Oh, I imagine six feet, four feet, five feet. It is according to what you are on. If you are on a small rig, why you are closer to the ground than you would be on a D-8 or D-7 or D-6.

Q. Now what was the nature of the surface of the ground over which you worked there that day?

A. Well, it was level.

Q. What portions were you filling with dirt?

A. Well, any place there was a wash in the levee, I was supposed to dump a load of dirt of all these washes, and then they was going to push it up the hill with bulldozers.

Q. Were there any interruptions in your work after you started until approximately ten or ten-thirty when there was a crowd of men that came in?

A. No, sir.

Q. Did you operate the dozer continuously during that period?

302 A. I did.

Q. And you sat up on that tractor and drove it forward and scooped up the earth and then drove over and filled up the holes?

A. That is right.

Q. Now to complete the job you would put a blade on the tractor and level that off?

A. No, that wasn't a bulldozer.

Q. Well, what do you mean, it was not a bulldozer?

A. Well, there was no blade on the front end of it.

Q. I mean you could put a blade on it and use it as a bulldozer to level off where you had filled up the hole, couldn't you?

A. Well, I wasn't down there to spot the dirt.

Q. Well, I don't know whether we understand each other, Mr. Voyles.

A. Well, I was just—

Q. Your job was to scoop?

A. That is right.

Q. Well now, when you filled up these holes, did it leave that even—was it perfectly even and level?

A. The holes was in the side of the levee. I said they was washes.

Q. Washes, yes. How deep would you say they were?

303 A. Well, some of them was maybe a foot deep, and my job was to dump this dirt in front of these washes, see; and then they was going to come back with bulldozers and push it up the levee because I couldn't pull that scoop up over the levee.

Q. That would level it off?

A. That is right.

Q. Now, what happened there along about ten to ten-thirty of that morning?

A. There was just a group of men come out there.

Q. How did they come?

A. What?

Q. How did they come?

A. Well, automobiles.

Q. What was the first you saw?

A. Well, I seen Mr. Terry, and I thought it was—I am pretty positive it was him. He was up on top of the levee. I was about 500, 600 feet away from him.

Q. Well now, were you down the slope?

A. I was down next to the river.

Q. Did you see these cars coming?

A. Yes, about ten o'clock, yes.

Q. Have you any idea how many there were?

304 A. There was a group of them.

Q. Could you see the bridge from where you were working?

A. Yes, I was about, I guess, a half mile below it.

Q. Could you see—did the cars park there along that levee road?

A. They were parked—some of them was parked on top of the levee, on the other side of the levee, I don't know what was on over there because I couldn't see.

Q. You didn't see what was on the other side of the levee?

A. No.

Q. Could you see whether the line of parked cars continued all the way up to the bridge, could you see that?

A. Well, that I couldn't say. I just—

Q. Now after these cars parked along there, what happened?

A. Well, they just come down and told me.

Q. Now what was the first thing—did you see any men come there from these cars?

A. Oh, yes.

Q. What did they do? What was the first thing

305 you saw them do?

A. Well, they never—they come out there and talked to Mr. Terry, and they was up on top of the levee.

Q. Now was there any equipment, or were there any cars there where Mr. Terry was, did you see?

A. Well, they were all up and down the levee there.

Q. As you looked up there and saw these men, how did they arrange themselves?

A. Well, I was a long way from where they was stopped up there on top of the levee.

Q. Do you have any idea of how many men were up there on top of the levee where Mr. Terry was, do you?

A. That I couldn't say.

Q. Any estimate at all?

A. There was quite a few, though.

Q. Does "quite a few" of them mean in your parlance—

A. Well, say 200, 300, I don't know.

Q. All right. You weren't close enough to hear what happened up there?

A. No, sir.

Q. Now what was the next thing that occurred?

A. After they had their conference up there, I guess what they was talking about—I could see them on top
306 of the levee, they just come down and said, "That is it."

Q. Came down to where you were?

A. There was quite a number—quite a few of them.

Q. About how many came down to where you were?

A. Maybe a hundred, a hundred and fifty.

Q. Where did they place themselves?

A. They just come down off the top of the levee.

Q. Well, did they all stay in one little group or did they surround your machine?

A. Well, they just walked up in front of it and I just couldn't travel any further.

Q. Now did you recognize any of the men in that crowd?

A. No, sir.

Q. Not anyone?

A. I didn't know one of them, one of the men.

Q. Did they have a spokesman?

A. What?

Q. Did they have a spokesman? Did any of them talk to you?

A. Well, they just said, "Put up your hand, that is it." So I just shut it off.

Q. Then what did you do?

A. I got down off my tractor and got a hold of the guy that was on the levee, he took me back up to my auto-
307 mobile.

Q. Did you see Mr. Terry?

A. What?

Q. Did you see Mr. Terry there?

A. No, sir.

Q. Now when these men put their hands up, did you have a load of dirt in the scoop?

A. Yes.

Q. Did you ask these men anything about that?

A. I asked them if I could take the tractor back up on the levee, and they said no, that was it.

Q. They said no?

A. That is right.

Q. How about the engine of your tractor, did you stop that, or did you get off it first?

A. Well, I don't know whether I did or not.

Q. You just got off?

A. That is right.

Mr. Alexander: I believe that is all.

The Court: Cross-examine.

308 *Cross-Examination by Mr. FitzGerald.*

Q. Mr. Voyles, was this the first time that you had worked—that you had work from Mr. Terry?

A. Yes, sir.

Q. And you were sent down there by the business agent of the engineers union 520?

A. Yes, sir.

Q. Who was that man?

A. Ralph Wright.

Q. Do you know whether he was the father of Ralph Wright, Jr. that was the president of Midway Construction Company?

A. Sir?

Q. Is he father of Ralph Wright, Jr., the president of Midway Construction Company?

A. Yes.

Q. Mr. Voyles, when a bulldozer is operating, filling holes or leveling up, do laborers usually signal them and spot the places and advise them about whether this should be done or that should be done in connection with the running of the bulldozer?

A. Well, wherever you got, whenever you are operating—if you got a man that is dumping the dirt, they
309 generally always have a dump boss there, see, in which case he belongs then to the laborers.

Q. That is what you were doing with your scoop?

A. Yes.

Q. Is that sometimes called a Hy-lift?

A. No.

Q. It is different. You had a scoop. Now then, the man who dumps dirt with a scoop, he leaves it at a place where afterwards it is to be leveled with the ground, and then you say that the laborer usually is the one who spots that for the operator, the bulldozer, so he won't have to leave his machine, is that right?

A. That is right.

Mr. FitzGerald: That is all.

Redirect Examination by Mr. Alexander.

Q. Did you say it was the dump boss who told you where to dump?

A. Sir?

Q. Is it the dump boss who tells you where to dump on big jobs, isn't it?

A. Yes.

310 Q. He is not a swamper?

A. No. They generally belong to the laborers.

Q. The swamper is something that is used on construction work, isn't it—

A. Well—

Q. —where you have in addition to the operation of the machine a laborer that has labor that has to be done?

A. That is right.

Q. You didn't need a laborer out on that job, did you?

Mr. FitzGerald: Object to that, if the Court please.

The Court: I can't see it is material whether he thinks it.

Objection is sustained.

Mr. FitzGerald: That is all.

The Court: I think we will stop at this point. Be back promptly at two o'clock, if you will. You may be excused.

(Whereupon the jury retired from the court room.)

The Court: Court will be recessed until two o'clock.

(Whereupon these proceedings in the above-entitled case were recessed until 2:00 o'clock p.m. of this same day, Thursday, September 16, 1954.)

311 Court convened in the above-entitled cause at the hour of 2:00 o'clock p.m., September 16, 1954, pursuant to recess.

Present: Same as before, to-wit:

Mr. Alexander, Mr. Oxtoby, and Mr. Stoddart, appearing on behalf of the Government;

Mr. O'Neill and Mr. FitzGerald, appearing on behalf of the defendants.

312 ARTHUR W. TERRY, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Alexander.

Q. What is your name, please?
A. Arthur W. Terry.
Q. Where do you live, Mr. Terry?
A. Route One, Baldwin, Missouri, St. Louis County.
Q. How long have you lived there?
A. About seven (7) years, eight (8).
Q. Where did you live prior to that, Mr. Terry?
A. Well, let's see, Kirkwood.
Q. Kirkwood, Missouri?
A. Yes, St. Louis County.
Q. What is your business?
A. Grading contractor.
Q. How long have you been in that business?
A. Since 1946.
Q. What was your occupation prior to going into that business?
A. Well, I was a radio officer in the Merchant Marine.
Q. How long did you follow that occupation?
A. About fifteen (15) months.

313 Q. Do you operate under the name of Terry Engineering Company?

A. That is right.

Q. Since you began the operation of that company, have you performed any contracts in Illinois?

A. Many of them.

Q. In any particular territory?

A. Scattered up and down the whole River. We missed hardly any Corps of Engineers' District; that is, of course, it is all St. Louis District where I worked, but they have them split up into different territories.

Q. Were these contracts that you carried on in Illinois all contracts with the Government, or were some of them contracts with private concerns?

A. Most of them were contracts with the Government. However, I did have one job "subbed" under Gene Luhr of Columbia, Illinois.

Q. On the Government contracts, were you the sub-contractor?

A. I was prime contractor.

Q. You were prime contractor, and on occasion subcontractor?

A. This case with Gene Luhr, subcontractor.

314 Q. Will you examine Government's Exhibit 2, Mr. Terry, and see if you are familiar with that document?

A. Yes.

Q. Is that one of your contracts with the Government made through the Corps of Engineers?

A. That is right.

Q. How was that contract let, on bids?

A. On bids.

Q. Was there an advertisement for bids?

A. Advertisement—I guess you would call it that. They send notice of letting to a group of contractors and interested persons.

Q. Did that notice outline in general the specifications covering the work to be performed?

A. Yes.

Q. What steps did you take to make a bid on that contract?

A. Well, you go look at the job site, and thoroughly go over it and look at the soil condition. You have to consider many things such as the weather.

Q. Now did you perform this contract in part?

A. Yes.

Q. When did you begin performance of the contract? Approximately, if you remember?

A. It was in March, I think, around the first of
315 March would be my guess.

Q. Of what year?

A. 1953.

Q. What equipment did you place on this job?

A. To start it, I had one bulldozer.

Q. Do you remember who your operator was on the bulldozer at the start?

A. A fellow named Keil, I believe.

Q. Now subsequently did you put additional equipment on the job site?

A. Yes.

Q. By the way, under whose direction did you perform this work?

A. The direction of the Corps of Engineers.

Q. Do you remember who their representative on the job site itself was?

A. Carl Lehman, I believe.

Q. Now what additional equipment did you put on the job as you continued the performance of the contract?

A. Well, we never did get it all moved in. The contract called for three tractors and scrapers, I believe, and one bulldozer.

Q. What equipment did you put down on the job site?

A. We had one tractor and scraper and one bull-
316 dozer that I am sure of. Whether we had another one in yet or not, I don't recall for sure now.

Q. Now, was there a stoppage in the performance of this contract?

A. Yes.

Q. When did you first learn of the stoppage or the possibility of a stoppage in the performing—

A. I believe the date was March 27, 1953.

Q. And from whom did you learn about it?

A. I believe it was my foreman.

Q. What was his name?

A. Bernie Clifton.

Q. Where did you see him?

A. I don't remember whether he called or came into the office.

Q. But you did hear from him?

A. Yes.

Q. Do you know approximately what time your men quit work on that day on this job?

A. Early in the afternoon is all I know.

Q. Early—

A. (Continuing.) Anyway they didn't finish the day. I believe it was—I kind of think it was around two o'clock.

317 Q. That is the first you heard of it?

A. Well, I didn't hear of it until later.

Q. Oh, I see, you heard of it the next day?

A. No, I heard it that same day, I'm sure. But—

Q. From the report of your foreman out there?

A. That is right.

Q. Now what, if any, action did you take following that?

A. I called the Corps of Engineers.

Q. Well, now, before answering that question, I will ask you whether or no your foreman in reporting this to you recited certain events that occurred out on the job site that morning, without telling what he said, did he recite a number of events that occurred out on the job site that morning?

A. Yes. He told me what happened.

Mr. FitzGerald: I object to what he told you.

By Mr. Alexander: Q. Not what he told you, just whether he did tell you about events that led up to your men discontinuing this work?

A. Yes.

Q. Did you take any action with respect to that at that time?

A. Well I called the Corps of Engineers, told them 318 what had happened.

Mr. FitzGerald: I object to what he told the Corps of Engineers.

By Mr. Alexander: Q. You reported it to the Corps of Engineers?

A. Reported it to the Corps of Engineers, that is right.

Q. And now what else did you?

A. Well, I contacted Ralph Wright, the Business Agent of Local #520.

Q. That is the Hoisting Engineers?

A. The Hoisting Engineers—Operating Engineers I believe they call themselves in Illinois.

Q. And you had a conversation with Mr. Wright about it?

A. Yes.

Q. Did you know Mr. Wright?

A. Yes.

Q. Did you talk with anyone else about it?

A. At that time?

Q. Well, what is the next thing you did about this situation?

A. Didn't do a great deal of anything. I tried to get hold of Jack Green, never was able to make contact. I talked to my attorney.

319 Q. Let me ask you if, following this occurrence, you at any time within the following days talked with Ralph Wright about it—Ralph Wright, Jr.?

A. Oh, yes.

Q. Did you know Ralph Wright, Jr.?

A. Yes.

Q. Did you talk to him personally or over the telephone?

A. I believe it was over the phone.

Q. Did he report to you with reference to his experience on his contract for the same type of work?

A. Yes.

Mr. FitzGerald: I object.

By Mr. Alexander:

Q. Without going into the details, you did get a report from him?

A. Yes.

Q. Now whom else did you talk to about it?

A. Well now, do you mean that day or within the next day or so, or later on?

Q. Just go along and tell from day to day what you did as well as you can?

A. Well, there were frequent consultations with Ralph Wright.

Q. Now which Ralph?

A. That is Ralph Wright, Senior.

320 Q. That is Ralph Wright, Senior?

A. Yes.

Q. Now what else did you do about it?

A. Well, I talked to my attorney.

Q. Now subsequently, did you receive some kind of a communication from the Corps of Engineers with reference to the performance of your contract?

A. Yes, I received notice to proceed—

Mr. FitzGerald: Just a minute, I object to what he received.

Mr. Alexander: Your Honor, I think it is material to show what he received with reference to this contract from the other party to the contract.

The Court: Have you the exhibit there?

Mr. Alexander: Here it is, your Honor.

(Document handed to the Court.)

Q. I might ask in order to clarify this a little bit:

Was that a written notice or an oral notice that you received, Mr. Terry?

A. I believe it was a registered letter.

Q. Have you got that letter?

A. I possibly do have in my files.

Q. Where would they be?

321 A. In my office in St. Louis.

Q. Will you state the substance of what the communication was?

Mr. FitzGerald: That is objected to, your Honor. The letter is the best evidence.

Mr. Alexander: I realize it is.

The Court: I think it is. The objection is sustained.

By Mr. Alexander: Q. By reason of the contents of that letter, did you take any action with reference to the further performance of this contract?

Mr. FitzGerald: I object to that, Your Honor, as calling for a conclusion.

The Court: Did he take any action, I think would be proper; but you are almost submitting what the letter was which is not proper in this sort of a question. Objection is sustained.

By Mr. Alexander: Q. All right, now what next did you do with reference to the performance of this contract?

A. With reference to the performance of it?

Q. Yes, or in preparation to perform it?

A. We started the job at eight o'clock on April 13th.

322 Q. Well now, preparatory to starting the job, did you make any preparation of any kind, did you contact any people or go any place?

A. Yes. I contacted the F. B. I.

Q. When did you first contact the F. B. I.?

A. Several days prior to starting this job on April 13th.

Q. Now with reference to the incident that occurred on March 26th, 1953, did you contact the F. B. I. with reference to that?

A. Yes.

Q. Now when did you report that to the F. B. I.?

A. All I can tell you is it was between the period of March 26th to April 13th. I don't recall exactly.

Q. Now did you, when you prepared to start the job over again, did you make another report to the F. B. I.?

A. Yes.

Q. Do you know how long before April 13th that would be?

A. No, I don't recall exactly.

Q. Do you remember what day you received the letter or notice from the Corps of Engineers?

A. No. It couldn't have been long because they

323 give you a three-day notice to proceed.

Mr. FitzGerald: I object to the form of the question.

The Court: Well, he answered that it couldn't be long. I don't know if that answer is of any value to you or not, but go ahead, let's get along.

By Mr. Alexander: Q. Now what further did you do in connection with preparing to resume operations?

A. I made steps to protect myself.

Q. Now what did you do about that?

A. First, I contacted my attorney and asked his advice on the matter.

Q. No, no, don't tell what he said or what you said to him.

Mr. FitzGerald: Yes, I object.

By Mr. Alexander: Q. You did contact your attorney?

A. That is right.

Q. And then did you conta anyone else?

A. Yes.

Q. Whom?

A. The Sheriff's Office.

Q. Where?

A. At Edwardsville, Illinois.

324 Q. Before doing that, did you hire a couple of new employees?

A. I hired two police officers from St. Louis County.

Q. Who did you have to see to employ those men?

A. Well—

Mr. FitzGerald: I don't see how that is material, if the Court please.

The Court: Objection sustained. I don't see how it is material. He said that he employed them.

By Mr. Alexander: Q. You employed them, for what purpose did you employ them?

A. Personal protection.

Q. All right, then what did you next do?

A. I took these two new employees to Edwardsville where we met and contacted the Chief Deputy, a Mr. Kellerman, I believe, telling him that—

Q. In what office?

A. In the office of the Sheriff.

Q. Of what county?

A. Edwardsville, that is Madison County.

Q. What occurred between you and the Chief Deputy?

Mr. FitzGerald: Now just a moment, are you asking for conversation?

325 The Court: What occurred, what do you mean, where did he go?

Mr. Alexander: I didn't get that answer.

The Court: I say: What do you mean by "What occurred," what they said or where they went, or what?

Mr. Alexander: Well, I will withdraw that question, and ask you:

Q. For what purpose did you call on the office of the Sheriff of Madison County?

A. Protection.

Q. Now who was with you when you talked to the Chief Deputy?

Mr. FitzGerald: He already said he and the two police officers.

Mr. Alexander: So I understood, I wanted to make certain.

Q. Were these two men that you had employed with you?

A. Yes.

Q. Do you know what day of the week that was?

A. April 12th, Sunday.

Q. Now after talking with the Chief Deputy, what did you do?

326 A. That day we returned home.

Q. Did you do anything further that day in preparation for resuming this work?

A. I believe that is the afternoon that I spent the whole afternoon and evening trying to get a hold of Mr. Green.

Q. At that time, did you know Mr. Green?

A. No.

Q. Had you ever seen him?

A. No.

Q. Or ever talked to him either over the telephone or personally?

A. No. I tried many times, but I never was able to get a hold of him, and he never would answer my calls.

Q. At what places—

Mr. FitzGerald: I move to strike out "he would never answer my calls."

The Court: Yes.

Mr. FitzGerald: Just a moment, Mr. Alexander, please.

The Court: Just a moment, the motion is granted, and it may be stricken.

By Mr. Alexander: Q. What places did you call
327 in your efforts to get in touch with Mr. Green?

A. I called his home and the Hall—that is the Hall of Local #397.

Q. The Hall of #397, Local Union?

A. Yes.

Q. Common Laborers' Union?

A. Yes.

Q. In response to those calls, did you at any time hear from Mr. Green, did he call you back on any occasion?

A. No.

Q. Now the next morning, what did you do in preparation for resuming this work?

A. I called Ralph Wright, Senior, that is, at the Hall, Local #520, and asked him for an operator—

Mr. FitzGerald: Now just a moment, please. I object—

Mr. Alexander: Not what you asked him.

Mr. FitzGerald: I object to conversation with Ralph Wright, Senior.

The Court: He has answered. He said he called the Hall.

By Mr. Alexander: Q. Did you obtain an operator for one of your machines to work that day?

A. Yes.

328 Q. Do you know who that man was?

A. I can't think of his name.

Q. Would you know it if you heard it?

A. I believe so.

Q. Was that Mr. Boyles?

A. Yes, that is it.

Q. Did you make this call from your home or from your place of business?

A. I don't recall now.

Q. Now what is the next thing you did?

A. I called Local #397's office.

Q. About what time did you call the Union Hall?

A. I called the first time at about seven o'clock, I believe.

Q. Did you reach anyone at the Hall?

A. Someone, it wasn't Jack Green.

Q. What did you say to him?

Mr. FitzGerald: I object to what was said.

Mr. Alexander: I think we—

Mr. FitzGerald: Oh, no, I object.

Mr. Alexander: The Union is a Defendant here. He called the proper place.

The Court: He called someone. He doesn't know 329 who it was. Someone answered the phone. I don't think it is proper. Objection sustained.

By Mr. Alexander: Q. Did you leave any message with this person?

A. No. Asked when he would be in.

Q. Asked—

Mr. FitzGerald: Just a moment, you haven't been asked about that, what you are talking about.

The Court: It may stand, asked when he would be in.

By Mr. Alexander: Q. All right, did you, after that call did Mr. Green call you any time that morning?

A. No.

Q. Did you call him again at any time that morning?

A. At five minutes until eight, yes.

Q. Where were you at that time?

A. I was in a restaurant located close to the job, Chain of Rocks Canal.

Q. What number, do you know what number you called for that?

A. No, I don't remember the number.

Q. What place did you call?

A. I called Local #397.

330 Q. Their official phone?

A. Yes.

Q. Did the man who answered the phone say who he was?

A. No.

Q. Did anyone else—did you ask for anyone?

A. Yes; I asked for Jack Green.

Q. Well, did somebody thereafter answer that call?

A. Yes.

Q. Who did he say he was?

A. Jack Green.

Q. Now will you tell the Court and Jury the substance of what you said to Mr. Green at that time, and what he said to you?

A. Well—

Mr. FitzGerald: If the Court please, of course this does not establish that it was Jack Green, but I am not objecting to it.

Mr. Alexander: Then what is the use of the statement?

Mr. FitzGerald: But it is not competent. If it were—

Mr. Stoddard: Then object.

Mr. FitzGerald: I don't want to object.

331 Mr. Alexander: Then why make the statement?

Mr. FitzGerald: Because I didn't want to make an objection to it.

The Court: All right, if there is no objection, counsel, go ahead.

By Mr. Alexander: Q. All right, will you tell the substance of the conversation you had with Mr. Green?

Mr. FitzGerald: The man who answered.

The Witness: I identified myself. He said, "This is Jack Green speaking." I identified myself, and I said, "Jack, we are going to start this job out here this morning and we can't—I can't afford to put a laborer on each one of these tractors." He says, "Well, you put a laborer on them if you are going to start them."

By Mr. Alexander: Q. What was that?

A. He said, "You will put a laborer on each one of these tractors if you are going to start it—if you are going to run it." I said, "Well, what are you going to do, are you going to put a picket line up?"

He said, "No."

I says, "Well, what are you going to do then?"

332 He says, "Never you mind." He says, "I will stop you."

I says, "How are you going to do it?"

He says, "You'll see."

Q. Was anything further said?

A. That is what I was trying to recall.

Oh, yes, I said: "Well, Jack, I have no use for laborers out here. This is a finished grading job."

And he says: "Oh, you'll find something for them to do."

I says, "Now you know there isn't anything for them to do at all."

He says, "Well, let them carry water for the operator when he gets thirsty."

And I said, "Well, isn't there some way that we can only put on one laborer instead of a laborer for each machine?"

He says, "No, you are going to have a laborer on each tractor."

That is about all I can recall about the conversation.

Q. Now what did you next do?

A. Went over to the job and gave instructions to 333 the operator to go ahead with the operation of the job.

Q. And that operator was Mr. Boyles?

A. Mr. Boyles.

Q. Where were the two men whom you had employed?

A. They were with me.

Q. Now, by the way, what were the names of those two men?

A. Leo Zinn and Frank Florence.

Q. Mr. Terry, can you step down here and see if you can point out—now this is Government's Exhibit 1 in the case, and that is the north, and this is the south; this is the east and here is the west. Will you see if you can locate on that plat where this work was being done this morning of April 13th?

Mr. FitzGerald: This is north up here?

Mr. Alexander: No, this is running north-and-south. Now just a moment, Mr. FitzGerald, if you will let me examine my witness, I will let you examine yours.

Mr. FitzGerald: Thank you, Marks, I appreciate your courtesy.

The Witness: Here is the bridge (indicating).

Mr. Alexander: Yes, there is the bridge.

The Witness: Our work extended from about right here to about here (indicating).

334 By Mr. Alexander: Q. Let's see, you mean that was the contract. Well, now, what I want is the approximate point—

A. That we were working on?

Q. (Continuing.) —that you were working on the 13th, was it south or north of the bridge?

A. It would be south.

Q. And about how far south would you say?

A. A quarter of a mile, on the levee, on the berm rather, right next to the water, that would be about right here (indicating on plat).

Q. Now if you will step right out of the way, the jury

can see about where that is, this being the bridge. Now will you resume the witness stand?

How did you go down to the site of the work from this little restaurant or diner where you made your telephone call?

A. Crossed the road, go along the side of the bridge, and turned under the bridge, turn south under the bridge, that is, and proceed for a quarter of a mile up a ramp, to the top of the levee, and the job—the tractor was working right below the top of the levee.

Q. Now the road you took then was not the road
335 that runs along the top of the levee?

A. No; it runs besides the levee.

Q. How close was your car parked to the place where the machine was being operated?

A. Immediately above it, up on the top of the levee, and the machine was down on the berm.

Q. Well, now, did the operator start to run the machine?

A. Yes.

Q. And in the course of his work, was he at times a greater distance from you?

A. Yes.

Q. Then would come nearer, and then go away again, and then come back?

A. Yes.

Q. Did you at that time, when you first arrived, notice any cars drive by, or anything of that kind?

A. No, sir; there was no one there when we first arrived.

Q. Did you remain in your car or otherwise?

A. In and out. It was cold that morning.

Q. Where were these two men who came with you?

A. Where were they? They stayed in the car with me, or if I got out, why, they would get out with me.

Q. Was there anyone else there, aside from the operator—in that immediate vicinity aside from the opera-
336 tor of the machine? And you three men?

A. Well, Deputy Sheriff showed up.

Q. What time did he come?

A. This is a rough figure, I would say eight-fifteen, eight-thirty.

Q. Do you know who that was, his name?

A. No.

Q. Would you have heard it if you heard it?

A. I believe so.

Q. Was it Jack Fricker or are you able to state?

A. I can't remember whether it was Jack Fricker or the big fellow. I can't recall which one it was.

Q. Was it the same man you talked with on the day before at the Courthouse or a different man?

A. No.

Q. A different man?

A. Yes.

Q. Now what did this Deputy Sheriff do? After he came there?

A. Oh, we just stood around and talked.

Q. He remained in the vicinity, did he?

A. Yes.

Q. Now how long was it before anything further happened?

A. Well, a Cadillac showed up on the job, drove up
337 the ramp, and I believe there was another deputy there by then, I don't remember, maybe even more, I just don't recall now. And I remember I asked the deputy who that was, and he said that was Jack Green.

Q. Did you see this Cadillac?

A. Yes.

Q. What color was it, do you remember?

A. Just light, that is all I remember about the color.

Q. Did that car stay there?

A. No, he drove on off.

Q. Now what was the next thing that happened?

A. Well, some more deputies showed up, and the Sheriff himself.

Q. How many representatives of the Sheriff appeared there, if you know?

A. Four deputies, I believe, and the Sheriff.

Q. Did you have any talk with the Sheriff there when he came up?

A. Nothing in particular, no.

Q. Now what was the next thing that happened?

A. The next thing that happened, I just saw cars coming from everywhere. They parked along the sides of the road both north and south, along the sides of the ramp,
338 and these men started coming up towards the top of the levee.

Q. Let me ask you, was there a Government Inspector around there that morning?

A. Yes.

Q. Do you know who that was?

A. Yes; it was Carl Lehman.

Q. How did he come there, do you know?

A. Government pick-up.

Q. What kind of vehicle was it?

A. A pick-up truck, a Dodge, I believe.

Q. Well, did he park his car around that job site some place?

A. Parked it right next to mine, about fifteen, twenty feet away.

Q. Do you know where Mr. Lehman was when these cars began to come up along this road?

A. Well, I believe he was down at—he was parked down on the ramp for a while, and then he moved up besides my car up on top of the levee.

Q. Under your contract, did Mr. Lehman have charge of this work?

A. That is right.

Q. Now will you go on and just tell, in your own words, Mr. Terry, what happened there after these men
339 left their cars and came down?

A. Well, it took them about forty-five (45) minutes for them to all assemble. I never saw so many men in one place—

Mr. FitzGerald: I object to that, and move it be stricken, if the Court please.

The Court: Objection sustained.

By Mr. Alexander: Q. How many men would you estimate there were, just your best estimate?

A. Just to pick a figure out of the air, fifteen hundred.

Q. Now where did these men go?

A. They all gathered around my car at the top of the levee. Some of them went down to stop the operator.

Q. Well, now, did you recognize any of the men in that crowd, did you see anybody in that crowd you knew other than the Sheriff's deputies and the men who were with you when you came that morning?

A. No. Outside of Carl Lehman, I don't remember anyone, I don't know any of them.

Q. Well now, just what happened there, just describe it in your own words?

A. Well, a group of men—

Q. I will withdraw that, and I will ask a different question:

340 I will ask you now whether or not you saw the man in the light suit at the end of the table there on that occasion?

A. I sure did.

Q. Where was he when you first saw him?

A. He was over with another group of men. He came back again.

Mr. FitzGerald: Who was that?

The Witness: That is Jack Green, right there (indicating).

By Mr. Alexander: Q. Do you know him as Jack Green?

A. Yes, I know him as Jack Green.

Mr. O'Neill: I didn't understand. Once, what did he say, he came back again, Jack Green?

Mr. Alexander: I will try to clarify that. My question—

The Witness: Well, he was there first. I told you a while ago, I drove up the ramp and stopped and talked to, I believe, the Sheriff. And then I asked someone who he was. They told me that was Jack Green, the light Cadillac.

All right, he came back some time when these men
341 were coming. He was there.

By Mr. Alexander: Q. Now was it that time when he came up and talked to this man from the Sheriff's office—was that before this crowd of men came up in their cars?

A. Yes.

Q. And approximately how long before?

A. Well, that must have been nine o'clock.

Q. Well, was that the time the Cadillac drove up?

A. That is the time the Cadillac drove up, about nine o'clock, I would say. These men came up on the job and surrounded my car, me and my men, and that was at about, ten-thirty.

Q. All right, now tell what happened there, just what occurred, what was said and done, and tell who made any statements, identifying them as well as you can?

A. All right. These men gathered around my car. They had already shut down my tractor and stopped him from operating, and they gathered around my car, and my two employees, and we didn't say anything to them; and in fact, they didn't even—weren't even sure who we were, apparently, from the way they talked. They just said they had orders from Green to not let him get into his car.

342 Q. To do what?

A. Not let me get into my car.

Q. Yes, go on.

A. Then I could see a group of men gathered over around another bunch of cars over there, and the Sheriff came out of that group of men and says, "Terry, you better get on out of here." He says, "There is going to be—"

Mr. FitzGerald: Just a moment, I object to this conversation.

Mr. Alexander: Was this right in the presence of this crowd? This crowd of men?

The Witness: Yes.

The Court: Oh, I think he may answer. Tell what was said.

The Witness: The Sheriff come over and says, "Terry, you better get out of here before you get killed." And one of the men in the crowd says, "He's not going anywhere until Green says he can."

Mr. O'Neill: What was that statement?

The Witness: One of the men in the crowd says, "He's not going anywhere until Green says he can go."

343 Mr. O'Neill: Okay.

Mr. FitzGerald: I move to strike that unless there is more identification. I don't know as to the crowd.

The Court: I think it may stand. Objection is overruled.

Mr. FitzGerald: If the Court please, there isn't any way by which we can find out what that occurrence was without more definite information.

Mr. Alexander: You can get all the information he has about it.

The Court: I think he may answer. Go ahead.

By Mr. Alexander: Q. Just continue to tell what happened there?

A. Leo Zinn and I tried to get into the car, and the men just packed in front of us and all around us where we couldn't move unless we forcibly tried to push them out of

our way, which we were afraid to do. And a few moments later, why, the sheriff left in the meantime, went over to this other group of men, and a few moments later, why, this fellow over here (indicating) comes back over to the crowd.

344 Q. You mean Mr. Green?

A. Mr. Green. I didn't know who he was at the time. And he says, "Which one of you is Terry?" And nobody answered. So he thought evidently this fellow Zinn that was with me was me, so he started "cussing", and I never heard such profanity in all my life.

Mr. FitzGerald: Just a moment, I move to strike that.

The Court: It may be stricken.

By Mr. Alexander: Q. Just go on, tell what was said in substance?

A. Well, I'm trying to tell what was said.

Q. Mr. Terry, you have to confine yourself, not to your conclusions as to what was said, but use the words.

Mr. FitzGerald: Let's ask the question, let's keep off the lecture platform.

Mr. Alexander: You handle your part, and I will—

The Court: Let's go ahead, gentlemen. Tell what was said.

By Mr. Alexander: Q. Tell what was said there by anyone, and if you can identify—

A. I notice there are ladies here. Do you want the 345 exact words?

The Court: Yes, we want the exact wording go ahead.

The Witness: I can't bring myself to say that.

The Court: Well, don't say that.

By Mr. Alexander: Q. Tell the substance of it?

A. He says, "You God-damn West Siders think you're going to come over here and tell us what you're going to do, bringing your God-damn gun-slingers over here. By

God, we'll show you. Now you get your ass back over to the West Side, and we don't want to ever see you over here again. What's more, I'm running you out of business. You are out of business as of right now. I don't care whether you are on the East Side or on the West Side."

Q. Did you say anything in reply?

A. I said, "I believe you," and held up my hand just like that (indicating).

Q. And said what?

A. "I believe you," I said. With 1500 men behind him, I am bound to believe him.

Mr. FitzGerald: Just a moment. Nobody asked you about 1500 men.

346 Mr. Alexander: Just a moment, I'm just asking what was said.

Q. Now what next occurred?

A. Well, we tried to make our way to the car. Green says, "Let him go boys," and one fellow in the crowd, leaning out against my car says, "That son-of-a-bitch isn't going to go anywhere until I get some of him."

Mr. FitzGerald: What?

The Witness: He made a pass at me, which I blocked with my left arm. Two or three others started making—started to try to get to me. Several men in the crowd tried to hold them back, and they started hollering, "Scab, you scab son-of-a-bitch," and more profanity; and two other men wasn't going to let us in the car at all. One says, "No, Jack says let them through." He says, "Come on, let them go." And so we finally got in the car.

By Mr. Alexander: Q. Now who got in the car with you?

A. Leo Zinn.

Q. Did the other man who came with you get in your car?

A. No; he became separated from us, and this fellow

347 sat at the door and said, "You had better get on out of here while you can." About this time they started kicking the car. I heard some fellow say, "Let's throw—let's push it in the River," and I figured it is time to start up and move out. So we started up and moved up about fifty feet to see if we could find out what happened to my other employee, Frank Florence. And we looked back, and we couldn't see where he was, he didn't come towards us; so we drove on off at a slow rate of speed, watching back to see if we could locate him, if he would ever show up.

Q. Now what did you continue to do then, Mr. Terry?

A. We drove slowly off the levee down the side of the levee and back onto this road that runs on the land side, berm, that we drove down on. We drove back under the Bridge and back up on top of the Bridge, and I stopped there and took a camera that I had with me, and took pictures of all this—took pictures of the crowd and the cars parked, and so forth.

Q. Now did anyone else drive up there about that time or there after?

A. One of the deputies with this other employee of 348 mine, Frank Florence.

Q. Did you know who the deputy was?

A. I kind of think that was the big fellow, Muso, or something like that.

Q. Was there a deputy named Muso?

A. Yes.

Q. Out there?

A. Yes. I was introduced to all of them; but it is kind of confusing there.

Q. What kind of a camera did you have, Mr. Terry?

A. One of these little Brownies.

(Whereupon some photographs were marked Government Exhibit 13 for Identification.)

By Mr. Alexander: Q. Do you remember how many pictures you took there?

A. Four or five.

Q. I'll ask you: Did you have them developed and prints made?

A. Yes.

Q. I'll show you Government's Exhibit 13 and ask you whether or not those are prints made?

A. Yes, that is them.

Q. Do those pictures correctly portray the situation out there at the time you took the pictures?

349 A. Yes, there are more cars than are visible in these pictures.

Mr. FitzGerald: Just a moment, Mr. Terry. I object to his going outside of the question.

The Court: I did not hear that. What is your objection?

Mr. FitzGerald: I am objecting that he started to go outside of the question. He was asked if these pictures correctly portray the conditions when they were taken. That is the sole question which can be answered by yes or no.

The Court: Well, I think he did answer the question, did he not? I don't know what else he did.

Mr. Alexander: He added a little bit, Your Honor. He said that there were more cars.

The Court: Oh, well.

By Mr. Alexander: Q. As to that part of the terrain there that is shown on these pictures, does it correctly show the general scene?

A. Yes.

Q. Now were all of the pictures taken with the 350 camera pointed in the same direction?

A. No.

Q. All right. Now take the top picture—

Mr. FitzGerald: Now wait a minute, Marks, are you calling a series of pictures Exhibit 13 or what?

Mr. Alexander: Yes. There are four pictures, and they are all attached together.

The Court: Go ahead with the question.

By Mr. Alexander: Q. Take the first picture at the top, in what direction was the camera pointed?

A. I was off the left side of the bridge. That would be approximately northeast, roughly.

Q. Now, the second picture, in what direction?

A. Off the top of the bridge towards the south.

Q. And the third picture?

A. The same.

Q. And the fourth picture?

A. The same.

Q. In other words, the top one the camera was pointed north, and the following three the camera was pointed south?

A. Yes.

Q. Now, where were your machines located with 351 reference to the line of cars shown along the roadway on the three photographs taken with the camera pointed south?

A. Directly west of the top of that ramp where the cars were parked, and on the berm next to the canal.

Q. Do the pictures show your machine?

A. No.

Q. Was there anything that intervened that prevented your machine showing?

A. Well, if I would have taken more pictures, it would have shown it.

Mr. FitzGerald: Just a moment, I object to that answer.

By Mr. Alexander: Q. No, I don't mean that. The roadway along which those cars are parked, where is that located?

A. That is the one that we drove to go up on the levee. My employees that were with me kept calling me to come on as there were some cars coming after us—

Mr. FitzGerald: Just a moment, if the Court please. There is no question being asked.

The Court: Yes, it may be stricken. Go ahead.

By Mr. Alexander: Q. Now I call your attention on the last photograph to a part where there is apparently a fork in the road. Now one part of the road goes to the left, one road to the right. Which of those is the levee road, or is one of them the levee road?

352

A. Well, the one to the right is the ramp that I had reference to that goes up the levee.

Q. That goes up the levee?

A. That is right.

Q. Now, over in the upper righthand corner of this photograph, is that water in the canal, Mr. Terry?

A. Yes.

Q. Now, where were your machines, your bulldozers and your scooper with reference to that water?

A. Back from the water's edge, perhaps fifty feet, and on what they call the berm of the levee which is the flat part, the bottom of the actual slope up to the levee itself, and right over and parallel with the top of those cars there where the ramp hits the top of the levee.

Q. Well, were your machines below the level of this terrain just to the right of this line of cars?

A. Yes. In other words, this is the levee here (indicating), and the machines do not show because the levee is in the way.

353

Q. Now, this crowd, where was it gathered with respect to your machine?

A. Directly above it.

Q. Well—

Mr. FitzGerald: He has been all over that, if the Court please.

The Court: He may answer.

By Mr. Alexander: Q. I am talking about the time at the taking of this photograph.

The Court: He may answer.

By Mr. Alexander: Q. Could you see any of this crowd at the time—the crowd of men at the time you took the photograph?

A. Yes; they were there where I was parked right at the top of the levee, at the top of the ramp where that line of cars stops.

Q. Now, during the time before that, had any of them been off the top of the levee? In other words, had any of them moved down the slope of the levee towards the canal?

A. The cars or the men?

Q. No, the men?

A. Oh, they had all long before that stopped, been already down at the bottom and surrounded the trac-
354 tors and the scraper.

Q. How far would you say it was from the point where you took the picture to the point where your machines were located?

A. A quarter of a mile.

Mr. O'Neill: What are you going to call these?

Mr. Alexander: 13-A, 13-B, 13-C, and 13-D, I'm trying to make them, to correspond with these others. It's kind of difficult for me to do it.

(Whereupon some photographs were respectively marked Government's Exhibits 13-A, 13-B, 13-C and 13-D for identification.)

Mr. FitzGerald: Would it not simply simplify this if you called the smaller ones 13-1, 13-2, 13-3, and 13-4 to agree with 13-A, 13-B, 13-C and 13-D?

Mr. Alexander: I will agree to mark the top one, 1, the second one, 2, the third one, 3, and the fourth one, 4.

Mr. FitzGerald: That's fine.

Mr. Alexander: 13-A will be corresponding to 13-1, 13-B, to 13-2, and so on. I hope I have picked them 355 correctly.

Mr. FitzGerald: That's my pencil now, don't walk off with it.

By Mr. Alexander: Q. Will you examine the four exhibits, 13-A, 13-B, 13-C, and 13-D, and compare them with Exhibit 13, the four pictures, and state if you can whether or not the lettered exhibits are enlargements of the smaller photographs?

A. That is quite obvious.

Q. Well, now, have I correctly identified, if you can tell, 13-A as being the top picture, 13-1, and that is the picture with the camera pointed in what direction?

A. Yes. That is the camera pointed north.

Q. All right. Now the other three, on each occasion the camera was pointed south?

A. Yes.

Q. Do the last three take substantially the same view?

A. Yes.

Q. Now, are you able to state whether or not the enlargements substantially show the conditions there at the time you took the photographs of the terrain which is within the picture?

A. Yes.

356 Q. Now, were there other cars around in that neighborhood other than the ones that are shown in these pictures?

A. There were.

Q. Can you tell us where they were located?

A. Underneath the bridge.

Q. Any place else?

A. Farther to the north, outside the limits of Exhibit 1, and also farther down the levee to the south beyond the range of the camera; also up—a continuation of that road that "Y's" there to the left.

Q. Mr. Terry, when you came to that work site that morning, did you have a firearm with you?

A. I had one in the car, yes.

Q. Where in the car?

A. In the dash pocket.

Q. The two men who accompanied you, I will ask you whether or not they were armed?

A. Yes.

Q. And where did they carry their weapons?

A. In their belts.

Q. Did you ever on any occasion go back to that job yourself, that job site?

357 A. You mean after this day?

Q. Yes, you yourself?

A. Yes.

Q. On what occasion?

A. I went back to pick up the tractor the next morning at three o'clock.

Q. Did you remove them?

A. Yes.

Q. Where did you take them?

A. Back to God's country, back to Missouri.

Q. Now, did your men complete that contract?

A. No.

Mr. Alexander: I think that is all.

The Court: The Jury may retire for ten minutes.

(Whereupon a recess was had.)

The Court: You may cross-examine, gentlemen.

358 *Cross-Examination by Mr. FitzGerald.*

Q. Mr. Terry, when was the first time that you did work on this levee in Illinois?

A. Levee at which this incident occurred?

Q. Yes. Well, not that particular section of it, but

any portion of that levee which was built at the time of the building of the Chain of Rocks Canal?

A. Under this same contract?

Q. Mr. Terry, did you understand my question?

A. No, I don't; that is the reason I am asking.

Q. When was the first time the first work was done by you upon the levee which was upon that Chain of Rocks Canal; do you understand that now?

A. That was the only contract I ever had on the Chain of Rocks Canal.

Q. That was the contract concerning which the incident you testified about arose, can you hear me, sir?

A. Just barely.

Q. You can barely hear me?

A. Yes. Your words escape me from time to time.

Q. Sir?

A. There are words that escape me from time to time.

359 Q. If I talk too rapidly, I don't mean to. We will start over. That is the same work that you had as your first work on that levee upon which the incident that you have testified about occurred, is that right, Mr. Terry?

A. That is the only work on that section of the levee, yes.

Q. Well, had you done work on other sections of the levee?

A. Not on the Canal. In Illinois, yes.

Q. Well, you mean on the old levee that was there by the Sanitary District, or what levee?

A. No. I had other jobs, up and down the Mississippi River, but that is the only contract I have ever had on the Chain of Rocks Canal or any portion thereof.

Q. Do you remember when you entered into that contract which heretofore has been marked—this contract states that it was entered upon the 6th day of January,

1953, is that your recollection of the date when the contract was signed?

A. Along in there, yes.

Q. When did you first move your equipment upon
360 the site of the levee to which the contract applied?

A. That date I don't know.

Q. The first time that you have talked about any equipment being there was some time in March of 1953, is that right?

A. That is the first time I have talked about it.

Q. That is my recollection.

A. I believe so.

Q. Well, is that it approximately, is it true that it was in March before you moved any equipment upon it?

A. We had worked for several weeks previous to our being shut down on that March date of 26th or 27th, whatever it was.

Q. Won't you please answer my question, Mr. Terry?

A. I am trying to to the best of my ability, sir.

Q. You understood the question, sir, didn't you?

Mr. Alexander: I object to arguing with the witness, your Honor.

Mr. FitzGerald: I am not arguing with the witness, if the Court please.

The Court: Go ahead, what was the last question?

(Whereupon question was read back.)

The Court: On the same particular land at the
361 same place?

The Witness: It was under the same contract, yes.

The Court: All right, he has answered.

By Mr. FitzGerald: Q. Is that the best recollection of the time you had equipment upon it?

A. It was across the Canal.

Q. Well, the same contract applied to both sides of the Canal, did it not?

A. That is right.

Q. Well, I am asking you: Under your contract, my question is and was, I think, when you first moved equipment upon the job contemplated by that contract?

A. I told you I didn't know the exact date.

Q. All right, sir. Mr. Terry, before you began to operate as a contractor under the name of Terry Engineering Company, was that it?

A. Yes.

Q. That was in 194—what?

A. 1946.

Q. Prior to that time, what had been your business?

A. What happened when?

Q. What was your work, what did you do before then?

362 A. I was in the mechanical consulting engineering business.

Q. Had you ever belonged to the Operating Engineers Union?

A. Yes.

Q. Are you still a member of it?

A. No.

Q. When did you cease being a member?

A. About 1941.

Q. It was affiliated with the American Federation of Labor, was it not?

A. Yes.

Q. And still is, isn't it, Mr. Terry?

A. What still is?

Q. The Operating Engineers Union is affiliated with the American Federation of Labor?

A. Yes.

Q. Did you know that during all of the year of 1953?

A. That did I what?

Q. Did you know that fact during all of 1953?

A. I don't think I had ever heard of a Hoisting Engineers Local in 1953.

Q. I am asking you.

363 A. Oh, in 1953, I was thinking of 1943—

Q. No, sir.

A. Yes, I think I knew it.

Q. You knew it also at the time in January of that year when you made this contract with the Government, didn't you?

A. Yes.

Q. Prior to the time of making the contract, had you inquired into the practice in that area with reference to the needed employees in order to avoid any union trouble?

A. Only for what men that I needed.

Q. Sir?

A. Only for what men that I needed.

Q. But you did make inquiries to find out the prevalent practice in the area, did you?

A. I know what the prevalent practice is in the area.

Q. You do know about it?

A. Yes.

Q. You knew that when you made the contract?

A. Yes.

Q. Well, now, Mr. Terry, did you ever operate a bulldozer?

A. Did I ever operate a bulldozer?

364 Q. Yes, sir.

A. Quite frequently.

Q. Sitting upon the bulldozer, would you describe, if you please—something at—the blade that is in front of the bulldozer, its size, and just what effect, if any, it has upon the vision of the operator of the bulldozer?

A. What effect it has upon the vision of the operator?

Q. Yes, sir.

A. I would say that it would limit his vision perhaps to five feet in front of the blade.

Q. What?

A. It would limit the operator's vision to perhaps five feet in front of the blade.

Q. How large is the blade, if you please, and how high is it?

A. It depends on the sized tractors.

Q. Well, upon the tractors that you had on this job?

A. The blades run ten-foot-four in length or in width, rather, and height would approximately be three feet.

Q. How many?

A. Three feet, or three and a half.

Q. In doing the work that the bulldozer did, it
365 levelled off and graded so that you had an even grading upon each side of any fill that was being made there, or on the levee, didn't you, isn't that right?

A. What did you want me to say?

Q. I asked a question. Didn't you understand it?

A. No.

Q. Couldn't you hear me?

A. Just barely.

Mr. Alexander: I object to that.

The Court: Oh, no, go ahead, let's get at it.

By Mr. FitzGerald: Q. Couldn't you hear me?

A. No, I didn't see that you made a question of it.

Q. The bulldozer levels off any earth that had been put any place where fills were made to furnish an even gradient on the whole surface of where the work of the fill was being made, is that not right?

A. On this particular job?

Q. Yes, sir, upon any job, that is the purpose of the bulldozer, isn't it?

A. Bulldozers are used for many things, sir.

Q. I am not talking about the sticking out or pushing new earth up; I am talking about levelling off where
366 earth has been brought by a scoop?

A. Bulldozer on this job served two purposes:

One was for filling in small erosional damage, and the other was for backblading.

Q. For what?

A. Backblading, in which your tractor runs backwards and you just drop your dozer blade and let it float, and in that way your dozer blade makes a more even finish than if the operator tries to control it going forward.

Q. In other words, the bulldozer is levelling off the earth where the scoop has put fresh earth, that is right, isn't it, whether it goes forward or it comes backward?

A. It didn't happen to be the case on this job.

Q. That is what I am talking about, that is what it is levelling off, to have the same gradient on both sides?

A. It has nothing to do with the scoop whatever.

Q. Well, the scoop brings earth up there, does it not?

A. The scoops on a job of that kind do their own grading, they do a better job of blading and grading than a bulldozer does.

Q. Well, you mean that the scoop on this job 367 graded off the earth that it brought up from the berm?

A. That is right.

Q. Well, just what work, outside of the levelling off of the earth that was brought up from the berm by whoever operated the scoop, just what did they do, the bulldozer operators?

A. The bulldozer usually worked independently of the scraper.

Q. Not "usually", what did they do on this job?

A. It worked independently of the scrapers.

Q. Well now, explain just what they did, not whether they worked independently of someone else, what did they do?

A. Where you had a rivulet—

Q. No, Mr. Terry.

Mr. Alexander: He is trying to explain.

Mr. FitzGerald: Just what they did on this job, please.

The Court: He can answer. Go ahead, tell what they did on this job.

The Witness: Where you have a rivulet washed out by the water, the bulldozer would come along and on the small rivulets would push dirt from a distance back
368 perhaps fifty, a hundred or one hundred and fifty feet to fill these little gullies caused by erosional damage.

By Mr. FitzGerald: Q. Is that all they did?

A. Just taking a light cut, and then after he was finished, filling it, then he would backblade it.

Q. Is that all they did on this job?

A. To my knowledge.

Q. Sir?

A. To my knowledge, yes.

Q. They had nothing to do whatever with the work that was done by the scoop?

A. Not that I ever saw.

Q. Mr. Terry, during the time that this job of yours was being worked, and from the first time that you had equipment on the job until you no further carried on the work on it, how frequently were you out on the job?

A. Not too often.

Q. Well, can you tell us the number of times altogether that you were out there?

A. No, because I can't tell you when the job started.

Q. Sir?

A. I don't even know when—exactly when the job
369 started. I tried to hit that job about three, four times a week.

Q. You think you were there as many as three, four times a week?

A. Yes.

Q. Did you know of Mr. Ralph Wright, Senior, sending up a man there to take the place of some mechanic who was operating the bulldozer because he had no right to operate it, prior to March 26th?

A. Frankly, I don't recall.

Q. You did have a mechanic operating the bulldozer, didn't you?

A. If I did have, it was for good reason—good cause.

Q. Just a moment. I don't care whether it was for good or bad reasons, I merely asked a question: you did have a mechanic operating it?

A. I don't remember.

Q. And he was not a member of the Operating Engineers Union?

A. I said I don't remember.

Q. Who operated the machine prior to the time that Mr. Boyles came up there?

A. I believe a young, blond-haired operator named 370 Koesterer.

Q. Koesterer operated before Boyles?

A. That is tractor and scraper, I believe he was the one who was on the scraper.

Q. Well, Koesterer didn't operate the machine after March 26th, did he?

A. No. No, I guess not.

Q. Did you have anyone operating the machine after March 26th until Boyles came there?

A. Not to my recollection, no.

Q. Mr. Terry, when you came out to this job, which you estimate to be probably three or four times a week, was that three or four times a week during the time that the work was in operation?

A. Yes.

Q. You would not come there when there was no work going on?

A. No.

Q. There was considerable rain between January, when the contract was signed, and the April 13th incident when rains prevented work, is that not true?

A. I don't recall now.

Q. Don't you remember anything about rains in the months of February, and March and April?

371 A. Not a great deal.

Q. Sir?

A. Not a great deal, no.

Q. Well, if there had been rains, it would not be feasible to operate these tractors or machines, would it?

A. Yes, that was a sand job, what we classify as a "sand job", and you could operate—you could operate the job when you could hardly work at any other time in any other places because sand, when it is wet, becomes more tractive.

Q. There was silt mixed with the sand, wasn't there, on all of the levee and the adjoining berm?

A. True.

Q. Well, that would mesh in and stick to the track upon which the bulldozer and the other Diesel engines, or whatever parts you would call them of the scoops were handled with, wouldn't it?

A. No. That was strictly enough sand that we never had that problem.

Q. Even in rainy weather?

A. No. We did, as I recall—didn't even have a shovel on the job at all.

Q. Sir?

372 A. As I recall, we didn't have a shovel on the job at all.

Q. On your job?

A. Yes.

Q. Had you inquired of others who were operating

caterpillar machines, which are track machines, on that job as to whether they had to clean out their tracks because of the rainy weather prior to the time you made this contract?

A. I had been in levee work for perhaps a year and a half—

Q. Just answer my question. Mr. Terry, I have not asked you where you had been. I asked you—

A. No, I did not.

Q. Mr. Terry, when was the first time that you were advised of any difficulty at all with the operation of your equipment upon this job?

A. The days either of March 26th or March 27th.

Q. After March 27th, had your equipment been operated at all before April 13th?

A. Not to my recollection, no, sir.

Q. So far as the condition existing with reference to your contract with the Government between March 27th and April 13th, or for a period of some seventeen 373 days, the situation so far as you were concerned had not in any way increased in danger, had it?

That is, danger to you of bodily injury or anything like that?

A. Well, it is impossible to answer that question yes or no.

Q. Well, had you seen anyone between March 27th and April 13th who threatened you?

A. No.

Q. When did you first go and contact Mr. Zinn or Mr. Florence?

A. After I received notice to proceed from the Government with my contract, it would be subject to cancellation, or my—

Q. Well—pardon me, sir, had you finished? I beg your pardon for interrupting, had you finished?

A. Yes, sir.

Q. Your contract, of course, required you to perform your work diligently, did it not?

A. I believe that is in the contract.

Q. So that all that the Government told you was to perform your contract in this notice to go ahead with the work?

374 A. Yes.

Q. Sir?

A. Yes.

Q. Do you recall the day you got this notice?

A. I remember getting it, that is all I can say.

Q. Well, now, as soon as you got that notice to go ahead, you then talked to Mr. Zinn and Mr. Florence for the purpose of having them act as bodyguards to protect you, is that right?

A. That is right.

Q. Mr. Terry, at that time when you first talked to them, you had also talked to the F. B. I., hadn't you?

A. Yes.

Q. Did the F. B. I. direct you to get bodyguards?

A. No.

Q. Did you ask the F. B. I. to furnish you any protection for the completion of this work on the levee?

A. Yes.

Q. Did they agree to do so?

Mr. Alexander: Objected to as immaterial, your Honor.

Mr. FitzGerald: I have a right to have all of the 375 facts, if the Court please.

Mr. Alexander: I don't see where it is relevant.

Mr. FitzGerald: Well, I do.

Mr. Alexander: I wonder under what authority they act.

Mr. FitzGerald: If you want to testify, Mr. Alexander, I would be tickled to death to have you take the stand.

The Court: I think your objection will be sustained as to whether they agreed to give him protection.

By Mr. FitzGerald: Q. Mr. Terry, after you had employed Mr. Zinn and Mr. Florence, you contacted the Sheriff in Edwardsville on Sunday, is that right?

A. The Sheriff's deputy.

Q. Well, the Sheriff's office?

A. Yes.

Q. And then you met someone over there on Sunday?

A. Yes.

Q. Who was it that you then met?

A. I believe it was Mr. Kellerman.

Q. Mr. Kellerman, one of the deputies, Chief Deputy?

A. Chief Deputy, I believe he is.

376 Q. Well, now, when you went over there, why did you go?

A. For two reasons: to ask for additional protection, and let them know what was apt to happen and to get a clearance, you might say, for these police officers from Missouri.

Q. Now at the time you went over there to get additional protection on Sunday the 12th of April, 1953, you never had had a talk with Jack Green, is that right?

A. No.

Q. Up to that time, there never had been any pickets upon your job out at the place when you were there?

A. No.

Q. So far as you knew, on April 12th when you went to Edwardsville, and with Mr. Zinn and Mr. Florence, talked with Mr. Kellerman, no one had ever made any threats against you or did you any bodily harm that you knew of connected with the Laborers Union in Granite City, is that right?

A. I know how they operate, they didn't have to make any threats.

Q. Just answer my question.

A. Yes, sir.

377 Q. I don't care whether you know how they operate or not, will you please answer my question?

A. No, no threats were made.

Q. Will you please tell the jury, Mr. Terry, how often you have carried a camera with you in your car?

A. How often?

Q. Yes, sir.

A. That is almost an unanswerable question.

Q. Was it your custom to have a camera in your car?

A. Yes, I take pictures of the jobs all the time.

Q. When did you put the camera in your car with which you took the pictures that have been introduced into evidence here?

A. When?

Q. Yes, sir.

A. I don't recall.

Q. You didn't put it in the car for the purpose of getting pictures that day, did you, on the 13th?

A. The thought occurred to me, but it was already there, I am sure.

Q. What?

A. I say the thought occurred to me.

Q. When did it occur to you, before you went over 378 there?

A. No, the thought occurred to me it would be nice to have along.

Q. The camera?

A. Yes.

Q. Before you went over there, you mean before you went over there that day, nothing had happened—

A. No.

Q. (Continuing.) —wich would indicate to you that there would be any such condition as you found there, isn't that right?

A. I answered that question before, a minute ago.

Q. Well, answer it now, nothing had occurred until you went over there with Zinn and Florence that morning?

A. No.

Q. Which would have indicated to you that what did happen, would occur, that is right, isn't it?

A. Now, let's qualify that a little.

Q. Won't you please answer my question?

Mr. Alexander: I think the witness should be permitted to answer the question.

The Court: He can answer that.

By Mr. FitzGerald: Q. Please answer the question.

379 A. He is trying to put words into my mouth.

Q. I am not trying anything, I am asking you for an answer.

The Court: Wait a minute, read the question.

(Whereupon question was read back.)

The Court: The last question may be stricken because he has answered it.

By Mr. FitzGerald: Q. Now, Mr. Terry, you went over there at that time with the idea of making this a test case, didn't you?

A. No.

Q. After the incident that you have told about had occurred, when all of the cars gathered around and there were men on the levee, and when the Sheriff's fellows were there and Mr. Green was there, you say that some people tried to get a hold of you personally?

A. Some people tried to get a hold of me. I was shot at on April 14th, is that what you mean?

Q. No, I am talking about April 13th, and you know I am talking about it, don't you?

A. No, I don't know what you mean.

Q. Sir?

A. No, I don't know what you mean.

380 Mr. FitzGerald: Will you read my question, Mr. Reporter? Please, now listen to it.

(Whereupon question was read back.)

The Court: He can answer whether he did or not.

The Witness: Some people tried to get a hold of me; personally, did you mean bodily, did they try to get a hold of me?

By Mr. FitzGerald: Q. Bodily, yes, sir.

A. Afterwards?

Q. During the time this whole thing was occurring?

A. Get a hold of me, no; they tried to strike me, yes.

Q. All right, tried to strike you. Where were you when they tried to strike you?

A. Trying to get in my car.

Q. Trying to get in your car?

A. To get to it, yes.

Q. Were Mr. Zinn and Mr. Florence there by you?

A. Mr. Zinn was.

Q. Sir?

A. Mr. Zinn was.

Q. He was there?

A. Yes.

381 Q. Was Mr. Florence there?

A. He was excluded by the crowd, he couldn't get to me.

Q. Well, he was there in the group, wasn't he?

A. No, I didn't see him at the time.

Q. Sir?

A. I didn't see him at the time, no.

Q. Did you send him away?

A. No.

Q. Was the Sheriff there?

A. He came up for a few moments.

Q. Well, I'm talking about the time when somebody tried to strike you?

A. No, the Sheriff wasn't there.

Q. Was any or were any of the Sheriff's deputies there?

A. Not that I recall.

Q. You know Mr. Muso, don't you?

A. Yes.

Q. Was he there?

A. I don't know. There is an awful lot of men there.

Q. Wasn't he there right within a few feet of you all the time until you left?

A. Muso, not that I saw, no, sir.

382 Q. Can you tell us the name of any person who was there who saw anyone strike you that morning or strike at you that morning?

A. Jack Green should be able to tell you.

Q. Jack Green, who else?

A. Carl Lehman.

Q. Carl Lehman saw that?

A. Yes.

Q. Who else?

A. He should have, I don't know, my back was turned.

Q. Who else?

A. Mr. Zinn can tell you.

Q. Mr. Zinn?

A. Yes.

Q. Who else, if anyone?

A. The rest of them were strangers to me, that is about all I think that would have seen it.

Q. Now, during the time, where was Jack Green?

A. I don't know. I was too occupied with getting to the car, the very minute he said, "All right, boys, let him go," why, then I tried to get to the car.

Q. Was it after he said, "All right, let him go," that the incident occurred?

383 A. Yes.

Q. Well, you don't know where Green was?

A. Mister, I was concentrating on getting to that car, I don't know where Green was, I wasn't watching Green.

Q. I don't care what you were doing, just answer my question.

You don't know, yet you say Green saw this man strike at you, is that right?

A. I say he can possibly tell you.

Q. I asked you who saw the man strike at you, did I not?

Mr. Alexander: We object to the form of that question, if your Honor please.

The Court: Objection sustained, we have gone over it.

By Mr. FitzGerald: Q. Mr. Terry, the first time that you ever talked to Jack Green was on the morning of April 13th at about five minutes to eight that morning?

A. That is my recollection, yes.

Q. Now, you have told heretofore of the conversation that you and he had on the telephone. How long after that was it when you first saw him on the levee?

384 A. It has been a year and a half, it is hard to recall. I try to be as accurate as I can.

Q. Won't you just please stop making a talk and tell me, if you don't remember, that you don't. The question is very simple.

A. Nine-thirty, I believe.

Q. Sir?

A. Nine-thirty, I believe.

Q. Sir?

A. Nine-thirty, I believe; that would be my estimate.

Q. Approximately nine-thirty?

A. Approximately nine-thirty.

Q. All right, did Mr. Green come there at about nine-thirty and remain there on the levee at that time?

A. No.

Q. Did you notice or see where he went upon leaving?

A. No. All I can recall now is that he just drove off.

Q. When next did you see him, if you saw him after that?

A. When he came up at—when he came up and said what he had to say.

385 Q. Well, what do you mean, when he came up on the levee?

A. No, I didn't see him come back at all. I was surrounded by men, I didn't see much of anything that went on outside of that.

Q. Well, did he come up on the levee and talk to you when he was first out there, Mr. Terry?

A. No.

Q. Well, when was it that you say he talked to you, did he talk to you on the levee?

A. On the telephone.

Q. No, I'm talking about when you next saw him, that was my question, on the levee?

A. When he came up—when he came up and cursed me out and told the men to let me go, that is the only—that is the first time that I had seen Green outside of when he drove up a few minutes before or an hour before that, or whenever it was in his car.

Q. Do you mean he came up and cursed you out, and then said to the men, "Let him go," is that what the substance was?

A. Well, I told in the testimony I gave a while ago what he said.

386 Q. I didn't ask you what you told, that does not answer my question.

A. Do you want me to say it all over again what he said?

Q. I asked you if that was the substance of it, he cussed you out again and told the men to let you go, is that right?

A. That is right.

Q. You did go, didn't you?

A. Thankfully.

Q. What was that?

A. I said "thankfully".

Q. Did I ask you your attitude about going?

Mr. Alexander: Certainly you asked him.

Mr. FitzGerald: I did not. I asked him if he left him.

Mr. Alexander: Why don't you ask to strike that as not responsive?

Mr. FitzGerald: No. I would like to inquire as to the reason he makes these voluntary statements.

Mr. Alexander: Ask him for the reasons. Maybe we won't object.

The Court: Well, proceed with the lawsuit after 387 you men get all through down there.

Mr. FitzGerald: I think Your Honor's criticism is very well merited by all of us.

The Court: Go ahead.

By Mr. FitzGerald: Q. Mr. Terry, did you ever see Mr. Florence again after you and Mr. Zinn had pulled away from the place where you got in your car down there on the levee?

A. Yes.

Q. Where was it that you first met him after you and Mr. Zinn had left there?

A. I was up on the bridge taking those pictures when he drove up with them.

Q. Now did anyone else ride with you in the car from the place where you had been standing with the car when you first came up there on the levee, up to the point where you took the pictures on the bridge besides Mr. Zinn?

A. No.

Q. Mr. Terry, do you remember how Mr. Florence came up on the bridge, whether he came in a car?

A. He came in a car, yes.

388 Q. Do you know if he came alone?

A. No, I believe a deputy brought him, a deputy sheriff's man.

Q. Do you know the name of the deputy?

A. I believe it was Muso, I'm not too sure.

Q. Mr. Muso?

A. Yes.

Q. He is very large?

A. Yes.

Q. He is a very large man?

A. Yes.

Q. Do you remember a deputy sheriff who was down there when you first arrived, and as I recall it, you said in answer to Mr. Alexander's inquiry that you thought his name was Mr. Fricker—Jack Fricker, do you remember of a deputy of that name being there when you first arrived on the levee that morning of April 13th?

A. As I told him, I was introduced to all of them; but I'm not sure about which one was which or about what times they got there or anything like that.

A. Do you remember Mr. Fricker, if you do remember a deputy by the name of Fricker, who came up to your car on the top of the levee?

389 A. Yes.

Q. That is while Mr. Zinn and Mr. Florence and you were sitting in the car, wasn't it; when you came up there?

A. I believe so.

Q. Did he get in the car with you?

A. He might have, I just don't remember, he might have.

Q. Well, he was up there for some little time when only you, Mr. Zinn, and Mr. Florence were there, wasn't he?

A. Well now, wait a minute—as I say, I'm not sure, there might have been two deputies came up at the same time, I don't recall for sure.

Q. Well, there were one or two, but do you remember Mr. Fricker was one of them, if there was more?

A. I'm not going to say that for sure, no, sir.

Q. Do you remember?

A. I'm confused as to which deputies were who, that was a very confusing morning.

Q. Would you know that deputy if you saw him now who came up there?

A. No, it isn't that I don't remember the deputies any too well, there are a couple of them I remember, 390 but I just don't remember who was who and the order of their arrival that morning.

Q. Mr. Terry, I will ask you if it isn't true that Mr. Fricker came up to your car while you, Mr. Zinn and Mr. Florence were in the car, and asked you what the trouble was; and you said that the union wanted you to put on a laborer; and he said, "Well, you know that it is the custom and the practice around here to do that." And you said, "Yes, I know it, but I'm going to make a test case of this."?

A. That is a lie.

Q. Or that in substance did not happen?

A. That did not happen in fact or substance or anything else. Why should I make a test case?

Q. Will you please wait just a moment until I ask a question? Now you understand that that was on the morning of April 13, 1953 when there was no one there but your two deputies, you, and this deputy sheriff by the name of Fricker and possibly one other person who was a deputy sheriff, if there were more deputies than one, and that did not occur, is that right?

A. Not to my recollection.

391 Q. Well, you do have a very vivid recollection about most of the things that happened?

Mr. Oxtoby: Object, arguing with the witness.

The Court: Objection sustained.

By Mr. FitzGerald: Q. How does it happen you don't remember of this incident?

Mr. Oxtoby: Arguing with the witness, argumentative.

The Court: Wait a minute until we get the question. What is the question?

By Mr. FitzGerald: Q. Mr. Terry, I ask you if you have ever seen this gentleman?

A. Yes.

Q. Was he a deputy who came up to your car on the morning of April 13, 1953, when you, Mr. Zinn and Mr. Florence were there in the car?

A. They all came up to my car.

Q. Answer my question.

A. I believe Mr. Fricker did.

Q. Before the others came?

A. I don't remember that, no, sir, I've told you that.

Q. Do you remember him getting in your car?

A. No, sir.

Q. Do you remember any deputy getting in your car?

392 Q. Did you have any conversation such as I have—

Mr. Oxtoby: Just a minute, he is a witness. He was brought in for identification. He should be excluded.

The Court: Yes, as far as this question is concerned. Go ahead.

By the Witness: A. I am not saying he didn't. I am just saying that I don't recall.

By Mr. FitzGerald: Q. But you are saying that you had no conversation with him?

A. I absolutely did not say I was making a test case

out of this. All I was trying to do is to stay in business, that is all.

Q. I didn't ask you that. Just answer my question. You understand my question: you did say you had no such conversation with him?

A. That is right, absolutely. Let's put it this way: I did not make that statement.

Q. Oh, you—did you make some statement in substance the same as that?

A. No.

Q. Well, what did you mean by saying that you did not make that statement?

A. I would never at any time ever make a state-
393 ment that I would make a test case of this.

Q. Mr. Terry, when you made this contract with the Government on January 6th of 1953, were you aware of a contract which had been entered into by the Gevernment on September 2, 1952 by the Midway Excavation or Midway Excavating Company of which Mr. Ralph Wright, Junior was the President?

A. No, I don't think I knew he had that contract until I got out.

Q. Were you aware when you did make your contract of his doing any work upon this levee adjacent to the place that was included in your contract?

A. Say that again.

Q. Were you aware when you made this contract on January 6, 1953, that the Midway Excavating Company had contracts to work adjacent to parts of the levee?

A. I already told you that I didn't think so.

Q. That is when you made the contract you did not know they had such a contract?

A. No.

Q. Mr. Terry, was the work which the Midway Excavating Company did—if you learned of the fact that they

were working there or had a contract to do similar
394 work in relation to you, did you then become aware of the character of work contemplated by their contract?

A. I never paid any attention to their contract in any way, form or fashion that I can recall.

Q. Was there any—

A. It had nothing to do with me.

Q. Was there in the time that you were working there, was there ever any request or direction by Mr. Lehman or any other of the supervisors—

A. Any request for what?

Q. Well, I hadn't finished my question. While you were working there, was there ever any question or any request by Mr. Lehman who, as I understand, was a government inspector or supervisor on your job, asking you to do certain portions of the work included in any other contract?

A. Not that I remember.

Q. At any time while you had this contract, after January 6, 1953, and before April 13th, during that time, had any other contractor come on the part of the job that was included in your contract to do any of the work?

A. No, not to my knowledge. Not my work. There
395 were other contractors in the vicinity working on construction contracts.

Q. Yes, sir.

A. I was on maintenance contract.

Q. This contract of yours, Mr. Terry, was a contract in which you were to furnish operators and they rented your equipment?

A. That is right.

Q. And you had bid so much, which was an estimate, to be paid for on an hourly rate for the machine and the operator, is that right?

A. That is right, yes.

Q. The contractor did not specify just who your employees were to be, it specified—

A. It says "necessary operating personnel," that is what it says.

Q. That is right. Now in this contract you were to pay and would have to pay the operator of the machine whatever the standard union wage was for the operating engineer?

A. That is right.

Q. You were aware of that, weren't you?

A. Yes.

Q. How much was that at that time?

396 A. I don't remember.

Mr. Alexander: We object, it is immaterial. Just a moment, I do not see the materiality of it.

Mr. FitzGerald: I think it is quite material, if the Court please.

The Witness: I couldn't tell you, the scales change.

The Court: He doesn't know, that settles the whole thing. Whether I am right or you are right or any of us, he says he does not know. I guess that is it.

By Mr. FitzGerald:

Q. Did you take into consideration the amount you would have to pay at the time you made your bid on that contract to pay the engineer who is the operator?

A. Of course.

Q. You knew that the wages that would be paid to a machine operator plus the inaction of the machine if he had to get off would cost you much more than the cost of any laborer on the job, did you not?

A. That is your statement and is not true.

Q. No, I am asking you, it is not any statement of mine, I have asked you a question.

397 A. No, you didn't, you made a statement and asked me to verify it.

The Court: Wait a minute, let's not have any argument between you and counsel.

Mr. FitzGerald: Did you understand what I said?

The Court: Wait a minute. Read that question, will you please?

(Question read back.)

The Court: Now you can answer whether you did or did not.

The Witness: Your Honor, you can't answer that question that way.

The Court: I can answer that myself. I think you could. Go ahead.

The Witness: He makes a statement, your Honor, and it isn't so, and then says, "Is that yes or not?",

The Court: He isn't making any statement. He is asking you if you knew that was true. You can say yes or no, very simply. Read the question again.

(Question read back.)

The Court: You can answer yes or no.

398 Mr. Stoddart: How many times is a fellow going to get off the machine?

The Court: I don't know. He can say no because he doesn't know either.

Mr. Alexander: Maybe he does know, can't he explain it?

The Court: Maybe he doesn't.

Mr. Alexander: That is all he wants to do.

The Court: Maybe he doesn't know.

Mr. Alexander: It's like asking a man, Your Honor, if he has stopped beating his wife.

The Court: I don't think there is anything hard in answering that. He can say "I do" or "I don't".

Mr. FitzGerald: I don't know what all the hollering is about that.

Mr. Stoddart: It's an unfair question.

The Court: There isn't anything unfair about it. Do you understand the question?

The Witness: I understand it, sir.

The Court: Do you care to answer it?

The Witness: No.

By Mr. FitzGerald: Q. You don't care to answer it?

399 Mr. Stoddart: It isn't he don't care to answer it—

Mr. FitzGerald: Will you please stop testifying, Mr. Stoddart?

Mr. Oxtoby: You are putting words in his mouth.

Mr. FitzGerald: I am not putting words in his mouth. If you birds want to testify, I will be glad to have you on the stand.

Q. How many guns did you have in your car when you came over on the 13th of April?

A. One.

Q. You had one?

A. One of mine, you mean?

Q. How many guns altogether in the car?

A. I guess three.

Q. That is Mr. Zinn had one, Mr. Florence had one, you had one?

A. That is right.

Q. Well, you had this in your pocket?

A. No.

Q. Where was it?

A. In the dash pocket.

Q. Did you offer Mr. Lehman a gun?

400 A. Yes.

Q. And you still had another gun besides the one you offered Mr. Lehman?

A. No. My lawyer advised me not to wear one.

Q. Oh, your lawyer told you not to wear one?

A. Yes.

Q. Just stick it around where it was handy, is that what your lawyer told you?

A. He says, "Don't have a gun on your person," is what my lawyer said.

Q. Who was your lawyer?

A. Fred Shuler.

Q. Who?

A. Fred Shuler.

Q. Where is he, in St. Louis?

A. St. Louis, yes.

Q. Did you ever take that gun out of the car, if you say there was only one in the car, and put it in your pocket?

A. No.

Q. You know Mr. Lehman—what is his first name? Karl?

A. Karl, yes.

Q. Did you see him there about your car that morning?

401 A. Yes.

Q. Was he there at any time when you got out of your car?

A. Yes.

Q. And you did have a gun in your pocket at that time?

A. No.

Q. Nor upon your person?

A. If I had it there, I will tell you.

Q. Answer my question, I'm not asking you anything else, Mr. Terry.

The Court: He has answered it, he said he didn't have it.

By Mr. FitzGerald: And then starts to make a speech.

Q. Mr. Terry, whether you put it in your pocket or in the belt of your pants, did you have a gun on your person when you got out of that car at any time?

A. No.

Mr. FitzGerald: I think that is all.

402 *Redirect Examination by Mr. Alexander.*

Q. Mr. Terry, preparing the bid for this contract, did you give consideration to the number of employees that would be necessary for you to have on any particular piece of equipment?

A. Yes, sir.

Mr. FitzGerald: If the Court please, that has all been gone over.

The Court: I don't think so.

Mr. Alexander: You opened it up. No, it hasn't.

Mr. Oxtoby: It came out on cross. He opened the door.

The Court: Objection has been overruled, go ahead.

By Mr. Alexander: Q. Now did you consider from the economic standpoint at that time the question of whether or not it would be a saving to put a swamper on each of these machines, did you give consideration on that? Whether it would be possible in the end to save some money?

A. It definitely would not save any money to have a swamper.

Q. Was there anything, as far as you could see, for
403 a swamper to do on that machine in doing that kind of work?

A. Nothing whatever.

Q. Now during the time you operated on this job, and when you were there, on such occasions as you were there, were you able to see where Mr. Wright was operating or did you know where he was operating?

A. I was up there one time, but I don't think his tractor was running or something, I don't know.

Q. You mean you were up at the site where he had his equipment?

A. Yes.

Q. Do you know whether as far as the territory covered

is concerned, these two contracts overlapped, do you know whether they did?

A. No, I don't know. I know they butted together, but whether there was something in the contract set up where they could overlap, I don't know that.

Q. Who directed where the machine should work?

A. What?

Q. Who gave the directions?

A. Karl Lehman.

Q. With respect to where the work should be carried on?

A. Karl Lehman.

404 Q. On the 13th day of April, did you have a foreman named Mr. Clifton—pardon me, on the 26th of March?

A. Yes.

Q. Was he on the job that day, had you sent him out there?

A. Yes.

Q. Were you there that day yourself?

A. No, sir.

Q. Do you know whether he may have operated one of the pieces of your equipment for a period of time that morning?

A. Not to my knowledge, no, sir.

Q. You don't know that he did or didn't?

A. No.

Q. As far as you know, did any mechanic employed by you on the 13th of April, when I understand Mr. Boyles operated your machine, did any other mechanic that day, as far as you know, operate one of your pieces of equipment?

A. No, definitely not.

Q. I'll ask you this: Were you out on any of the days on this job site when Mr. Clifton was there?

A. I don't believe so.

405 Q. Do you know whether he may have operated one piece of your equipment for a period of one of the days when he was on the job, do you know whether he did?

A. No, I don't; but I can find out through my payroll records.

Q. Now in answer to Mr. FitzGerald you stated you did not inquire about operating your equipment in the rain. What was your basis for that answer?

Mr. O'Neill: I didn't understand you.

Q. In answer to one of Mr. FitzGerald's questions, you said you did not inquire about whether it was practicable to operate this equipment in the rain while it was raining?

A. Oh, we never operate while it is raining.

Mr. FitzGerald: I don't think I ever asked that.

It's all right, no objection.

Mr. Alexander: Well, I have it noted.

Q. In working, have you have had jobs where you worked under similar soil conditions with scrapers, tractors, bulldozers?

A. Oh, yes, many of them.

Q. Have you as an operating engineer yourself in the past operated in that kind of soil?

406 A. Yes.

Q. In your opinion, is the operation of that type of equipment on the soil when it is damp, is it easier to handle the machines than when it is dry?

A. That is right.

Q. Why is that?

A. The sand has a tendency to compact itself.

Q. In just a short normal shower, in your opinion, would there arise any necessity in that kind of soil of cleaning the tracks if it happened to be raining a little?

A. No.

Q. Mr. Terry, did you recognize the gentleman that

was brought into the room as one of the deputies who was out on the job that day on the 13th of April?

A. He looked familiar. I was later told who he was here in the building, and so forth.

Q. Now did any one or more of those deputies, when they arrived here, take the first one that you saw, did he come up and talk to you at the car?

A. They all talked to us at one time or another.

Q. All of the deputies?

A. That is right, and the sheriff himself, and to
407 say who did what or who said this or who said that and who got into the car, if they got into the car, that I can't tell you because I just don't remember.

Q. But did you have a talk with one or more of them in which you made some statement about why you were out there, or what possibly might happen?

A. I am sure that that was discussed, yes.

Q. Now did you in any such conversation state that you were out there to make a test case?

Mr. FitzGerald: If the Court please—

The Witness: Absolutely not.

Mr. FitzGerald: I think this isn't redirect.

The Court: This is redirect. You are on the same question, he may answer.

Mr. O'Neill: Was his answer, "I did not make that statement."?

The Court: I didn't hear his answer.

The Witness: "Absolutely not" was not exact words.

By Mr. Alexander: Q. Now did you, however, make other statements to one or more of these deputies about why you were there and the circumstances that brought you there?

A. Yes, I think there was some explanation there as to what we expected, and so forth.

408 The Court: I think we will stop at this point.

Mr. Alexander: I think we can finish, Your Honor.

The Court: I don't know whether the other side can or not. You are about through, Mr. Alexander.

Mr. Alexander: I am just about through.

Q. Mr. Terry, will you look at Government Exhibit 13, and I will ask you whether or not your initials appear on each one of these prints?

A. Yes.

Q. Do you remember the occasion when you put those initials on the prints?

A. Yes.

Q. Did you at that occasion put the date?

A. No.

Q. Do you know who put the date there?

A. No, I don't.

Q. Do you know when it was that you put your initials on these prints?

A. I believe it was the first part of this year.

Q. Of what year?

A. 1954.

409 Q. To whom did you give the prints?

A. I believe it was F. B. I. Agent Small.

Mr. Alexander: I think that is all.

The Court: Any further questions?

Mr. FitzGerald: Yes, there will be some, Your Honor.

The Court: I think we will let it go until tomorrow morning.

Now, ladies and gentlemen of the jury, remember the admonition of the Court. Be back promptly tomorrow morning at ten o'clock in your room. You may be excused. The Court will be adjourned until ten o'clock tomorrow morning.

(Whereupon these proceedings in the above-entitled case were adjourned until the following day, Friday, September 17, 1954, at ten o'clock a. m.)

410 Court reconvened in the above-entitled cause at the hour of 10:00 o'clock a. m., September 17, 1954, pursuant to adjournment.

Present:

Same as before, to-wit:

Mr. Alexander, Mr. Oxtoby, and Mr. Stoddart, appearing on behalf of the Government.

Mr. O'Neill and Mr. FitzGerald, appearing on behalf of the defendants.

411 ARTHUR W. TERRY, having previously been called as a witness on behalf of the Government, resumed the stand, was examined further and testified as follows:

Recross Examination by Mr. FitzGerald.

Q. Mr. Terry, may I have the picture that was marked, please, the ones that Mr. Terry took, particularly the small ones?

(Documents handed to counsel.)

By Mr. FitzGerald: Q. Mr. Terry, how did you happen to put these initials of 1/4/53 on the back of these pictures?

A. I didn't put those initials. I put my initials on there. I didn't put the date.

Q. You didn't put the date?

A. No.

Q. Well, that would be before the pictures were taken, wouldn't it?

A. That date that is on there?

Q. Yes.

A. Someone evidently made a mistake.

Q. Because the pictures were taken on the 13th of
412 April of 1953, weren't they?

A. They certainly were.

Q. How did you happen to put your initials on them?

A. When the FBI Agent picked them up, why, he asked me to initial them.

Q. After you left the scene of the place you were doing the work, you and Mr. Zinn and Mr. Florence drove back to St. Louis?

A. Yes.

Q. Where was the first place in St. Louis that you went?

A. Well—

Mr. Oxtoby: I object, improper cross-examination. There was no mention of St. Louis.

Mr. FitzGerald: There was a reference to it.

Mr. Oxtoby: This is recross examination.

The Court: Read the question to me.

Mr. FitzGerald: He said—

Mr. Oxtoby: Not on redirect.

The Court: Wait a minute, gentlemen. We won't benefit a thing by your argument. I want the question read.

(Question read.)

413 The Court: When?

Mr. FitzGerald: When he left the scene of the incident.

The Court: I think he may answer, if he went to St. Louis. I don't know if he did or not.

The Witness: It was either the Corps of Engineers or the FBI. I visited both that afternoon, yes.

By Mr. FitzGerald: Q. Had they asked you to return there after, after your visit out to the place where you were doing the work?

A. If they did, it was an informal request.

Q. Well, whether a formal or informal one, did they ask you?

A. I don't recall that they did, no.

Q. Did you leave the films for these pictures there with them?

A. No.

Q. Did you have these enlargements, or blown-up copies of the pictures made yourself, or did someone else have them made?

A. I didn't have them made.

Q. Sir?

A. I didn't have them made.

414 Q. Who did, if you know?

A. Well, I really couldn't tell you.

Q. Sir?

A. I really couldn't tell you. I never saw those blown-up copies before this week.

Q. Was it the first time that you saw them when you came to the Court House here in Quincy?

A. The blown-ups? Yes.

Q. Mr. Terry, between March 26th and the morning or Sunday of the 12th of April can you tell us if you called Mr. Green at all any time?

A. I tried to call him. I was never successful getting hold of him.

Q. Between the 12th and before the 12th—from the 26th of March, did you make any calls?

A. Yes, also my attorney did.

Q. What was that? I forgot your attorney's name.

A. Fred Shuler.

Q. He called for Mr. Green?

A. Yes.

Q. About how many times did you try to contact him before Sunday, the 12th of April?

A. All I could say would be several.

Q. You never went at any time to the office of the 415 labor union there in Granite City?

A. No.

Q. The first time that you ever talked to Mr. Green personally then was on the morning of the 13th of April, 1953, is that right?

A. Yes.

Q. Did anyone hear you conversation with Mr. Green on that morning?

A. I don't remember. Mr. Zinn and Mr. Florence were with me, but whether they had heard it or not, I couldn't say.

Mr. FitzGerald: I think that is all.

The Court: Is that all, gentlemen?

Mr. Alexander: Just one little question, your Honor.

Redirect Examination by Mr. FitzGerald.

Q. On these telephone calls between the 26th of March and the 12th of April, where did you call to?

A. To the Hall.

Q. Where did you get the telephone number of the Hall?

A. I don't know where. I guess I got it from the telephone book. I don't remember now.

416 Q. When you made these calls, did anyone answer?

A. Yes. I left a message, I know, on at least one occasion.

Q. And that message was for whom?

A. For Mr. Green, for him to call me.

Q. Did you ever receive a response to any of your calls?

A. No.

Mr. Alexander: That is all.

The Court: You are excused. You may remain in the court room, if you desire.

Call the next.

(Witness excused.)

417 JOE M. PEARSON, called as a witness on behalf of the Government, having first been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Alexander.

Q. What is your name, please?

A. Joe M. Pearson.

Q. Where do you live, Mr. Pearson?

A. Brentwood, Missouri, a suburb of St. Louis, Missouri.

Q. What is your occupation?

A. I am a Special Agent of the Federal Bureau of Investigation.

Q. How long have you been a Special Agent?

A. Approximately six years and a month.

Q. How long have you been stationed in the State of Missouri?

A. Subsequent to August, 1953, which would be approximately twelve and a half months.

Q. Prior to August, 1953, had you ever been in the State of Missouri?

A. Only driving through.

418 Q. Had you ever been before August, 1953—have you ever acted as an Agent of the Bureau in the State of Missouri, carried on any duties there?

A. No, sir, I had not.

Q. Now, do you know Mr. A. W. Terry?

A. Yes, sir.

Q. When did you become acquainted with him, can you tell us?

A. I believe it was in January, 1954.

Q. Where was it?

A. It was at Mr. Terry's home in Castlewood, Missouri.

Q. Will you look at the series of photographs, Govern-

ment's Exhibit 13, and examine the photographs and the backs of them.

Did you ever see those photographs before?

A. Yes.

Q. On what occasion?

A. The first time that I met Mr. Terry, he turned over those photographs to me.

Q. What was that date?

A. It was in January, 1954. It was January 4th, that I obtained these pictures.

Q. Did Mr. Terry do anything with respect to the pictures at that time?

419 A. Yes, sir, he did.

Q. What did he do?

A. He put his initials on the reverse side of the photographs.

Q. Was that at your request?

A. Yes, sir.

Q. Now did you write anything on the four photographs?

A. I did.

Q. What did you write on them?

A. I wrote my initials, and inscribed a date on the back.

Q. What date did you put on them?

A. I put 1/4/1953, indicating January 4, 1953.

Q. What was the true date?

A. It should have been January 4, 1954.

Mr. Alexander: I think that is all.

The Court: Cross-examine?

Mr. O'Neill: No cross-examination.

The Court: You may be excused.

(Witness excused.)

The Court: Call the next.

Mr. Alexander: Your Honor, we offer Government Exhibits 13, 13-A, 13-B, 13-C and 13-D in evidence.

420 The Court: Any objections?

Mr. O'Neill: Your Honor, none that I know of. I would prefer to wait until Mr. FitzGerald returns, but I don't think we will have any objection.

The Court: We will consider them as offered.

Call the next witness.

421 WILLIAM FRANK FLORENCE, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Oxtoby.

Q. What is your name?

A. William Frank Florence.

Q. Where do you live, Mr. Florence?

A. 3335 Cambridge, Maplewood, Missouri.

Q. How long have you lived at that address?

A. For about seven years.

Q. What is your business or occupation?

A. Deputy sheriff of St. Louis County.

Q. How long have you been a deputy sheriff?

A. Seventeen years altogether.

Q. Speak up so we can all hear you.

A. Seventeen years.

Q. Do you know a person by the name of Arthur Terry?

A. Yes, sir.

Q. Have you seen him around the Federal Court House here in the last several days?

A. Yes, sir.

Q. Did you have occasion to see him on or about

422 April 12, 1953?

A. I did.

Q. Who was with you?

A. Who was with me?

Q. Was anybody with you?

A. It was in my home.

Q. When you first met Mr. Terry?

A. It was in my home, my wife was there.

Q. Did you have a conversation with Mr. Terry at your home?

A. I did.

Q. What, if anything, did you do as a result of that conversation?

A. Well, he hired us to—as bodyguards, this other deputy and I.

Q. Who was the other deputy?

A. Leo Zinn.

Q. And he hired you both as what?

A. Bodyguards, I guess you would call it.

Q. Did he tell you why he needed bodyguards?

Mr. O'Neill: Just a minute. Your Honor, I don't know whether that is proper at this time.

Mr. Oxtoby: State of mind of Mr. Terry, hearsay 423 is admissible, your Honor, I think in this type of case to show state of mind by what Mr. Terry told him. This is subsequent to the first event of March 26th and prior to the events of April 13th, and it goes to his state of mind, which is not a hearsay exception. It is not even hearsay, it goes to show Terry's state of mind.

The Court: I think you are correct. Objection will be overruled. You may answer.

By Mr. Oxtoby: Q. What did Mr. Terry tell you he needed bodyguards for?

A. He said he was having trouble on a government job and he was threatened.

Q. And was threatened?

A. That is right.

Q. What did you do on that Sunday then, if anything?

A. Well, I told him before I would accept it, I wanted to talk to the sheriff of Edwardsville.

Q. As a result of your statement to Mr. Terry about wanting to see the sheriff, what did you do, if anything?

A. I went to the sheriff at Edwardsville.

424 Q. Was Mr. Zinn with you?

A. Yes, sir.

Q. Was this on Sunday, April 12th?

A. Yes, sir.

Q. What time did you arrive in Edwardsville?

A. I believe it was before noon, I'm not sure.

Q. Did you have a conversation?

A. Well, I went to the sheriff's office and asked to see the sheriff; and they referred me to the chief deputy sheriff, Kellermann, I believe his name is.

Q. Speak up now and a little bit slower, Mr. Florence.

A. Well, he came to the City Hall or the jail—.

Q. By "he" you mean who?

A. The chief deputy.

Q. Kellermann?

A. Kellermann, yes, sir.

Q. And he is the chief deputy sheriff of Madison County, Illinois?

A. He introduced himself as the chief deputy.

Q. And introduced himself to you, you mean to Mr. Terry?

A. No, just to me.

Q. Just to you?

A. That is right.

425 Q. All right. Did you have a conversation with the chief deputy sheriff?

A. Yes. I outlined the way Mr. Terry told me the trouble was, and I said, "I have Terry here with us." That was Leo Zinn and I and Terry.

Q. You were kind of a spokesman for the group?

A. Sir?

Q. You were kind of spokesman for the group?

A. Yes, sir.

Q. You did the talking?

A. Yes, sir, that is right.

Q. And as I understand it, your purpose was to merely advise them of your presence?

A. That I was coming, as far as the Illinois line, with Terry.

Q. Is that customary between police officers of different States?

A. Yes, sir. And I asked them if they would have a man meet me, and they agreed.

Q. I take it then you drove back to Missouri?

A. Told them I would be there at eight o'clock Monday morning, and we drove back to St. Louis.

Q. Did you return to St. Louis then?

A. Yes.,

426 Q. Directing your attention to the following day, Monday, April 13, 1953, did you see Terry and Zinn on the morning of that date?

A. Yes.

Q. Did you meet some place in St. Louis?

A. At my home.

Q. At your home?

A. Yes.

Q. What did you do, if anything?

A. Well, we were ready to go over to Illinois with him, and we left the house and went to Illinois.

Q. Speak up and speak slowly, please.

Now where did you drive to in Illinois?

A. To the—over to the—over the canal bridge, over Chain of Rocks.

Q. The Chain of Rocks?

A. Yes.

Q. Did you park your car?

A. Well, we stopped and had a coffee at a little restaurant first just over the canal bridge.

Q. Did Terry do anything at the place you stopped for coffee, if you remember?

A. Yes, sir, he made a phone call.

Q. What did you do then?

427 A. Well, we left the restaurant and went to the government job on the canal.

Q. Do you know whom he made the telephone call to?

A. Only by what he said.

Q. What did he say?

A. Jack Green.

Mr. FitzGerald: Objection.

The Court: Objection sustained.

By Mr. Oxtoby: Q. Did you hear any of the conversation?

A. I didn't even see him make the call.

Q. Oh, you didn't hear anything then?

A. No, sir.

Q. All right. After you left the coffee shop, Mr. Zinn I take it was with you too?

A. Yes, sir.

Q. Where did you drive to next, if anywhere?

A. I drove around underneath the bridge of the canal bridge to a project there.

Q. That is the 66 bridge, is it not?

A. I believe it is. It has been a year and a half ago.

Q. Or what they call the Chain of Rocks bridge, is that right?

428 Mr. Alexander: Will you speak up louder, please?

The Witness: I believe it is.

By Mr. Oxtoby: Q. And where did you park your car onto the bridge?

A. No, we drove on up onto a levee.

Q. About what time of the day was this, Mr. Florence, if you remember approximately?

A. Approximately around eight o'clock.

Q. And did you meet anybody at the levee where you stopped?

A. Well, there was a fellow there with a government truck, a pick-up truck.

Q. Incidentally, do you know what his name is?

A. No, sir, I don't.

Q. But there was a man in a government truck, a pick-up truck?

A. Yes, sir.

Q. Did you see anyone else on the levee at that time and place?

A. Not at that particular time, no, sir.

Q. What did you do then, if anything, as far as you were concerned?

A. We just stood around.

429 Q. What did Mr. Terry do?

A. He stood around with us.

Q. What did Mr. Zinn do?

A. Right along with us.

Mr. Alexander: Will you speak up, please? The last juror over there wants to hear.

By Mr. Oxtoby: Q. What did Mr. Zinn do, if anything?

A. Well, he stood around with us.

Q. Did you see any equipment working on the levee after that time?

A. Yes, I seen a—I don't know what it was—a bull-dozer or scoop of some kind.

Q. You were up on top of the levee?

A. Yes, sir.

Q. Where was the scoop?

A. It started right underneath the bridge where it was

parked, and he drove over the levee and down on the inside.

Q. Did you see anybody else later on that morning?

A. Yes, sir.

Q. Say within the next half hour.

A. The deputy sheriff.

Q. Pardon?

A. A deputy sheriff drove up a little later.

430 Q. What was his name, if you remember?

A. Fricker, I believe.

Q. Was he attached to the sheriff of Madison County?

A. Yes, sir.

Q. Did you have a conversation with him?

A. Well, yes. I got into his car with him.

Q. Did Mr. Terry have a conversation with him, if you know?

A. I don't remember whether he talked to him or not.

Q. What about Mr. Zinn?

A. Well, he was in the car. He was in Terry's car.

Q. Without telling us what the conversation was, did you converse back and forth with Mr. Fricker?

A. Yes. We was talking back and forth about—

Q. Different things?

A. About sports.

Q. Sports?

A. Yes.

Q. You are an ex-wrestler, are you not?

A. Yes, sir.

Q. Oh, incidentally, how were you equipped as to firearms?

A. I had my regulation .38 Smith & Wesson.

Q. What about Mr. Zinn?

431 A. He has the same.

Q. Did Mr. Fricker know you were armed, or was it apparent to him?

A. Yes, sir, I told him.

Q. Had you told anybody else in the sheriff's office on the prior Sunday?

A. Yes, sir.

Q. Now tell us about Mr. Terry. Was he armed?

A. I don't know, sir.

Q. Did he have a gun?

A. He had one in the glove compartment, he said. I never seen it.

Q. All right. Now after you were talking about sports with Mr. Fricker did anybody else come up on the levee?

A. Yes, a fellow by the name—another deputy sheriff by the name of George Musso.

Q. Did you have a conversation with him too?

A. He got in the car with us. He is an ex-football player.

Q. And you discussed sports with him too?

A. That is right.

Q. And I take it he was introduced around to Mr. Zinn and Mr. Terry?

432 A. Yes, sir.

Q. Or you met him the prior Sunday?

A. No, sir, I never met any of them before.

Q. What happened next, if anything, as far as people coming on the levee?

A. Well, another fellow—another deputy came there, Turner, I believe his name is; and then after he got there, the four of us sit in the car and we sit in there about fifteen twenty minutes, I imagine; and the chief deputy and the sheriff came, that is Callahan and Kellermann.

Q. Callahan and Kellermann? Callahan is the sheriff and Kellermann is the chief deputy, is that correct, of Madison County?

A. Yes, sir.

Q. All right. Did you see anybody else come up on the

levee? Let us put it this way, that was not attached to the sheriff's office?

A. Yes, sir, we sit there a few minutes and a little colored Cadillac pulled up.

Q. This is a four-door Cadillac, is it?

A. I didn't notice.

Q. A big Cadillac?

A. Yes, sir.

433 Q. How many people in it?

A. One.

Q. And the person driving this Cadillac, did he have a conversation with anybody?

A. Well, he stopped opposite of our car, I would say, about twice the length of this court room away, on the road, and Officer Frieker got out of the car and went down and talked to him.

Q. Did you know who the person was driving the Cadillac at that time?

A. No, sir, I didn't.

Q. Have you subsequently learned, Officer Florence, who that man was?

A. Yes, sir.

Q. Do you see him in the court room?

A. Yes, sir (indicating).

Q. Indicating Jack Green, the defendant?

A. Yes, sir.

Q. Did you have any conversation with Jack Green at that time and place?

A. No, sir.

Q. Did Mr. Terry, if you know, have a conversation with him at that time and place?

A. Not at that time, no, sir.

434 Q. How about Mr. Zinn, did he have a conversation at that time and place?

A. No, sir, he was still in the car.

Q. Just Mr. Fricker?

A. Yes, sir.

Q. All right. What did Jack Green do, did he leave then, if anything?

A. This Officer Fricker came back and says, "There is no use worrying, everything is O. K." And with that the Cadillac had left.

Q. The Cadillac drove off?

A. Yes, sir. Yes, sir, it drove off, and he got back in the car, and then a few minutes, why, men started coming.

Q. In a few minutes the men started coming?

A. Yes, sir.

Q. All right, tell us about that.

A. Well, there was just a—

Q. Before you tell us about it, when the men started or anything, give us your position on the levee in relation to Terry and Zinn.

A. Well, I walked away from Fricker's car. I would say I was about 100, 125 feet from Terry's car, and 435 well, the men came so fast that that is where I stayed.

Q. Were there men in between you and Terry?

A. All around me.

Q. How many would you estimate that were just around you?

A. There was about five hundred, I imagine.

Q. Did you try to get in the Terry car?

A. No, sir.

Q. You stayed where you were?

A. Yes, sir.

Q. Next to Mr. Musso?

A. Yes, sir.

Q. Were you in a position to observe generally the mob that was around Terry's car?

Mr. FitzGerald: Just a moment. Will you please just ask the question without a lot of insinuation?

Mr. Oxtoby: I am not insinuating at all, counsel.

Mr. FitzGerald: I object to the use of the word "mob".

Mr. Oxtoby: I don't know what five hundred people are that prevent him—

436 Mr. FitzGerald: I don't want to argue with you.

Mr. Oxtoby: I don't want to argue with you either. You made the objection.

The Court: Objection is sustained. I think it is an improper term.

By Mr. Oxtoby: Q. Did you observe the crowd of people around Mr. Terry's car, Officer Florence?

A. It wasn't just a certain crowd around his car, they were all around everything.

Q. Did you see any scuffling?

A. Not at that particular time.

Q. At any time?

A. Yes.

Q. Near your car or near Mr. Terry's car?

A. Near Terry's car.

Q. There was considerable confusion?

A. Well, I wouldn't know about "considerable", there was a scuffle.

Q. Could you see Mr. Terry from where you were standing?

A. No, sir.

Q. All right. What happened next, if anything?

A. Well, it seemed there were two different ends of this group, and they had this Officer Fricker and
437 Callahan who would walk back and forth, first to Terry and then back to another group.

Finally I seen Terry's car pulling off—

Mr. Alexander: I can't hear. Speak up.

Mr. Oxtoby: Speak up, Officer Florence.

By Mr. Oxtoby: Q. What next happened?

So far as Mr. Terry's car was concerned, what happened next?

A. I seen it pulling off.

Q. And did you go with it?

A. No, sir.

Q. And did you then leave the levee too?

A. Well, I told Mr. Musso—

Mr. FitzGerald: I object to conversation.

Mr. Oxtoby: The Union is on trial.

438 The Witness: What did you say?

By Mr. Oxtoby: Q. What did Musso say to you, what did you say to him in the presence of the people who were around you?

A. I said to Musso, and there were people all around me, "There goes my ride."

Q. What did Mr. Musso say?

A. He said, "Don't worry about it. I will take you out."

Q. Did you leave with Mr. Musso?

A. We got in his car and left.

Q. When did you next see Mr. Terry?

A. In the middle of the bridge.

Q. What was he doing at that time and place?

A. He was taking pictures.

Q. Officer Florence, I am handing you an exhibit identified by the Clerk as Government's Exhibit 13, and I ask you if that is an accurate pictorial representation of the situation as it existed on April 13, 1953, at or about

439 the hour of 10:30 a.m. on the Chain of Rocks project?

A. Yes.

Q. I hand you an exhibit marked Government's Exhibit 13-C and ask you if that is not an accurate pictorial representation of the events or the situation at the time the picture was taken?

A. Yes.

Q. And I ask you the same question as to Government's Exhibit 13-A, is that an accurate pictorial representation of the situation as it existed at the time the pictures were taken by Mr. Terry?

A. Just a minute. Are you asking me if I seen these cars here?

Q. I am asking you if that is an accurate pictorial representation or accurate photograph of the situation at the time the picture was taken, if you know. If you weren't looking that way, of course, it is different.

A. Well, I have seen a lot of cars on these roads, these particular roads, I believe that is.

Q. Take a look at Government's Exhibit 13-C. Would you say that was an accurate pictorial representation or accurate portrayal of the situation as it existed at that time and place?

440 A. That is the way it looked.

Q. I take it you then drove back to Missouri?

A. To the Engineers Building in St. Louis.

Q. Corps of Engineers?

A. Yes, sir.

Q. Did you yourself ever return to the Chain of Rocks canal project?

A. No, sir.

Mr. Oxtoby: That is all.

Cross-Examination by Mr. FitzGerald.

Q. Mr. Florence, are you correct in saying—

Mr. Oxtoby: The form of the question: "Are you correct" is argumentative.

The Court: I hear no objection.

Mr. Oxtoby: I object to the form of the question.

The Court: Objection is overruled.

By Mr. FitzGerald: Q. Mr. Florence testified that when

Jack Green first came there, Mr. Fricker, Mr. Musso and Mr. Turner were there. Is that the best of your recollection about it?

A. Yes.

441 Mr. Alexander: If the Court please, I am going to object because that is not a correct statement of what the witness said, and he is asking him—

Mr. Oxtoby: He is making it as a statement of fact.

The Court: He is asking if it was a correct statement, the best he remembered, and he said yes.

This court cannot remember what he said every time he talks. I don't remember what he said.

Do you?

Mr. FitzGerald: They don't know, either, your Honor. They wouldn't object—

Mr. Oxtoby: That is an insinuation, if I ever heard one. Counsel talks about insinuations.

The Court: Listen, I don't want any more of this on the part of either one of you. We are going to try a lawsuit here and not have a conference between lawyers every time a question is raised. You are all too smart for this, and I know it.

442 Now, then, the question is objected to here that that wasn't what he said.

Who was present? I will find out, at the time he suggested it?

The Witness: There was four of us deputies, Leo Zinn and Mr. Terry.

The Court: Yes, was anybody else there at that time?

The Witness: That is when the Green car pulled up.

The Court: I see. All right, now I think the jury can tell what the man said.

By Mr. FitzGerald: Q. Was Mr. Musso there at that time?

A. He was sitting in the back seat with me.

Q. With whom?

A. With myself.

Q. At the time Terry or Green first came up there?

A. To the best I can remember, he was.

Q. Was Turner there, to the best of your recollection, at that time?

A. Yes, sir.

Q. So that Fricker, Turner, and Musso were all there when Jack Green came up the first time, is that right?

443 A. Yes, sir, there were four deputy sheriffs in the car.

Q. Yes, sir. Now Jack Green talked only to Fricker at that time, as you recall it?

A. Yes, sir.

Q. And then Jack left?

A. Yes, sir.

Q. How long was he there, about?

A. A very short time, between five and ten minutes.

Q. After he left, when was it that first you saw any other cars coming and parking in the vicinity?

A. About fifteen, twenty, twenty-five minutes afterwards.

Q. Do you remember when it was, with reference to the time these cars first began parking there, that Mr. Callahan, the sheriff, and Mr. Kellermann, the chief deputy, came?

A. There wasn't too many people there by the time they got there.

Q. When they first came, where did they go with reference to Mr. Terry's car?

A. Well, we all got out of our car.

Q. And went over in the vicinity of Mr. Terry's car?

A. No. I would say it was about a hundred feet

444 from Terry's car.

Q. All of you were within approximately a hundred

feet of Mr. Terry's car after the sheriff and Mr. Kellermann, his chief deputy, came?

A. Yes, sir.

Q. Now, when Mr. Green came back there, had all of these people gotten out of there at that time?

A. I can't hear you, sir.

Q. When Mr. Green came the second time, had all of the cars that came there that morning arrived, or did the cars come after he arrived?

A. There were cars coming after he arrived.

Q. After he arrived—you say his car stopped about twice the length of this room from the place where the Terry car was parked, is that right?

A. You are speaking of the second time that he came back?

Q. Yes, sir.

A. I didn't see him come back the second time.

Q. Oh, didn't you see his car when he came back the second time?

A. No, sir, I didn't see his car.

Q. Well, you don't know when he came back the second time?

445 A. No, sir, I don't know when he came back.

Q. Did you see him at all after he came back the second time?

A. Yes, sir.

Q. Was the first time that you saw him when he came up to the Terry car, just shortly before Mr. Terry pulled out?

A. No, I had seen him at the other end of this crowd of men, and they were talking; and Callahan and his chief deputy and Fricker were talking with him, and they would come back by where I was standing and walked to Terry's car.

Q. How far away from Terry's car was it that Mr.

Callahan, Mr. Kellermann and Mr. Fricker were when they were talking with Mr. Green, after he had come back the second time?

A. Oh, I would say about four or five hundred feet.

Q. How—Had you seen Green, at any time before that, go up to the Terry car in the vicinity of the Terry car?

A. No, sir.

Q. After that talk which Mr. Callahan and Mr. Kellermann and Mr. Fricker had with Mr. Green, did Mr. Callahan or all of those three persons go back to the Terry
446 car?

A. Yes, sir.

Q. Did they thereafter have a conversation with Mr. Terry?

A. Well, I couldn't hear. I was too far back, but they was up there.

Q. How far away were you from the Terry car?

A. From 100 to 125 feet from there.

Q. But you did see them go back and hold a conversation with Terry?

A. Yes, sir.

Q. After that conversation, did any of them go back to the place where Mr. Green was?

A. After this conversation?

Q. Yes, sir.

A. No, sir. I seen the car pull away then.

Q. Well, did Mr. Green come up to the Terry car?

A. They all went over to Terry's, that is what I said.

Q. Oh—

A. They all came from the other end and went to Terry's car.

Q. You weren't there when Green, Callahan, Fricker and Kellermann came up to the Terry car?

Mr. Oxtoby: That is assuming facts not in evi-
447 dence, that Green and the others came up to the Terry car.

Mr. FitzGerald: He has just said that they all did.

Mr. Oxtoby: No.

The Court: I think your witness testified to that—the other witness, I mean, who testified here.

Mr. Oxtoby: I don't think he did.

Mr. FitzGerald: I thought he did.

The Court: I will sustain the objection.

By Mr. FitzGerald: Q. Did I understand you to say, Mr. Florence, that Mr. Green, Mr. Callahan, Mr. Fricker and Mr. Kellermann came up together to the Terry car after that conversation you have just mentioned?

A. They came from one end of the mob to the other, and we were approximately, I would say, in the center.

Q. Well, you saw where Green and Callahan and Kellermann and Fricker were talking, you saw where they were?

A. Yes.

Q. And then you saw them leave. Now where did 448 they go when they left there, if they all left?

A. They walked straight down to—down the levee to Terry's car.

Q. To Terry's car?

A. Yes.

Q. Now after they had arrived at Terry's car, did you go up to the Terry car at all any time before Terry left?

A. No, sir.

Q. You did not hear any of the conversation or statements?

A. I couldn't move.

Q. Were you in a position so you could see all of those four people while they were there by the Terry car?

A. No, I couldn't see them, no. I was looking over the heads of a bunch of men, I could not distinguish that.

Q. You didn't see what occurred up there at that time?

A. No, sir, I didn't.

Q. At any time, while you were there on the levee, did you hear Mr. Green or any of the persons about Mr. Terry make any threats?

A. What do you mean, sir?

449 Q. Did you hear any persons threaten—did you hear any person threaten Mr. Terry up in the vicinity of the car?

Mr. Alexander: Now just a moment: We object on the ground that he has already testified that he didn't hear anybody.

The Court: That is right, he testified he didn't hear anybody. That covers it.

By Mr. FitzGerald: Q. Mr. Florence, when you and Mr. Zinn, Mr. Terry came over on Sunday and had a talk with Mr. Kellermann, did you inform him at that time that you and Mr. Zinn were armed?

A. Did I inform whom, sir?

Q. Mr. Kellermann, the deputy.

A. Yes, sir.

Mr. FitzGerald: I think that is all, your Honor.

Redirect Examination by Mr. Oxtoby.

Q. How far away were you from the Terry car at the time Green and Kellermann were there, in feet approximately?

A. Well, judging approximately, I would say about 100 to 125 feet.

450 Q. Was the area open between the car you were standing by and Mr. Terry's car, or were you—

A. Just one big circle of men, that is all.

Q. Why didn't you go to Mr. Terry's car?

Mr. FitzGerald: I object to that.

Mr. Oxtoby: You opened the door.

The Court: I think he answered it, that he couldn't get there. Didn't he before on your direct? I think he did.

Didn't you say the reason you could not get there was because the people were around you?

Mr. FitzGerald: Will you please, if you want to talk to each other, not tell everybody in the group about it? I object to this.

The Court: The jury isn't listening to their testimony. They are listening to this man.

Let's get along.

Mr. FitzGerald: They should—I don't know about that.

By Mr. Oxtoby: Q. Why couldn't you get there?

Mr. FitzGerald: I object to that.

451 The Court: He may answer.

The Witness: A. Because there were so many men there I couldn't move.

Mr. Oxtoby: That is all.

Mr. FitzGerald: I have one question, your Honor.

Recross Examination by Mr. FitzGerald.

Q. You made no effort to see if they would let you through, did you, Mr. Florence?

A. No, sir, I didn't.

Mr. FitzGerald: That is all.

(Witness excused.)

The Court: Call the next witness.

Mr. Alexander: We want to renew our offer of the pictures, if we may, that we made while Mr. FitzGerald was out.

The Court: The photographs, both enlargements and the regular ones, is there any objections?

Mr. FitzGerald: No, we have no objections, your Honor.

The Court: They may be admitted.

452 (Whereupon said documents were received into evidence.)

LEO HOWARD ZINN, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Oxtoby.

Q. What is your name, sir?

A. Leo Howard Zinn.

Q. Where do you live, Mr. Zinn?

A. Maplewood, Missouri, 7719 Loman.

Q. How long have you lived at that address?

A. Three years last June.

Q. Are you a married man?

A. Yes, sir.

Q. What is your business or occupation?

A. I am a deputy constable for the Third District, St. Louis County.

Q. How long have you been so occupied?

A. Going on five years.

Q. Is that a full-time job?

453 A. Yes, sir.

Q. In that official position, are you permitted or entitled to wear firearms?

A. Yes, sir.

Q. Do you know a person by the name of Arthur Terry?

A. Yes, sir.

Q. Directing your attention to on or about April 12, 1953, did you have occasion to see Mr. Arthur Terry on that date?

A. Yes, sir.

Q. Could you tell the court and jury where?

A. Sir?

Q. Could you tell the court and jury where you saw him on that day?

A. That morning I met Mr. Terry and Mr. Florence at Mr. Florence's home in Maplewood.

Q. Did you have a conversation with Mr. Terry at that time and place?

A. Yes, sir.

Q. Did Mr. Terry advise you at that time that he wanted to employ you?

A. Yes, sir.

Q. Did he tell you what he wanted to employ you as, or in what capacity?

454 A. Yes, sir.

Q. What was that?

Mr. FitzGerald: I object to that.

Mr. Oxtoby: State of mind again, your Honor.

The Court: He may answer.

The Witness: A. Bodyguard, sir.

By Mr. Oxtoby: Q. Did he tell you why he needed a bodyguard?

A. Yes, sir.

Mr. FitzGerald: If the Court please, I think that is certainly objectionable.

Mr. Oxtoby: State of mind again.

The Court: I think he can testify to that.

By Mr. Oxtoby: Q. Did he tell you why he wanted a bodyguard?

Mr. FitzGerald: Objection.

The Court: Objection overruled. He may answer.

The Witness: A. He said he had been threatened, that he wanted someone to ride back and forth with him in his car.

By Mr. Oxtoby: Q. Did you accept the employment?

A. Yes, sir.

Q. And on that day, Sunday, did you and Mr.
455 Florence and Mr. Terry drive anywhere?

A. Sir?

Q. Did you go any place with Mr. Florence and Mr. Terry on that Sunday?

A. Yes, sir, we did.

Q. In whose car?

A. Mr. Terry's car.

Q. Where did you drive to?

A. Edwardsville, Illinois.

Q. To what place in Edwardsville?

A. We went directly to the sheriff's office.

Q. Whom did you meet at the sheriff's office, if you remember?

A. One of the deputies, I don't know what his name was.

Q. Later on that afternoon, or at that time and place, did you meet a person by the name of Kellermann?

A. I don't remember the exact time, but it was a chief deputy.

Q. You met the chief deputy sheriff?

A. Yes, sir, later on.

Q. Did you have a conversation with the chief deputy sheriff at that time and place?

456 A. No, I didn't.

Q. Did any other member of your group have a conversation with him?

A. Yes, sir, Mr. Florence—Officer Florence and Mr. Terry, I spoke with them.

Q. What was the purpose of your trip to Edwardsville, the sheriff's office?

A. Well, we had no authority to cross the bridge in Illinois, and Mr. Terry said he expected trouble, and we went to the sheriff's office, and they were going to be there when we left off and they told us it would be all right for us to come over there.

Mr. FitzGerald: Will you speak a little louder?

Mr. Oxtoby: I didn't hear your last phrase.

The Witness: What was the question, sir? I'm sorry.

By Mr. Oxtoby: Q. What was your purpose in going to the sheriff's office on that Sunday?

A. To get the deputies there on the job on Monday morning.

Q. Any other reason?

A. Well, we asked if it was all right if we came over there as police officers of St. Louis County.

457 Q. Is that a customary procedure between officers of different States when they go over to another State?

A. Well, we always do. I mean, we make ourselves known, who we are, yes, sir.

Q. Did you have any discussion with the chief deputy or anybody in the sheriff's office concerning your carrying —and Mr. Florence's carrying of firearms?

A. No, sir, I did not.

Q. About what time of the day was it that you were at the sheriff's office, if you remember, Officer?

A. I don't know exactly. It was sometime before noon, it was in the morning.

Q. I take it then you left Edwardsville?

A. Yes, sir.

Q. And went back to St. Louis, or to Missouri?

A. Maplewood, yes, sir.

Q. Now directing your attention to the following day, Monday, April 13th, did you have occasion on that day in the morning to see Mr. Terry and Mr. Florence again?

A. Yes, sir.

Q. About what time of day was it?

458 A. It must have been around seven in the morning, or seven-thirty, something like that, I don't remember the exact date or time.

Q. What did you do, if anything?

A. We went back over to the canal zone where this project was that he was working.

Q. Across the river and to the canal?

A. Yes, sir.

Q. Were you armed?

A. Yes, sir.

Q. Was Mr. Florence armed?

A. Yes, sir.

Q. Do you know whether Mr. Terry had a gun?

A. Not to my knowledge, no, sir, I never saw it.

Q. Did he tell you whether he had one or not?

A. He said he had a gun in the glove compartment, yes, sir.

Q. What time did you arrive at the levee, approximately?

A. Well, it was somewhere around eight, or a little bit after eight, I don't remember the exact time.

Q. Prior to the time—before the time you got to the levee, but after the time you left St. Louis, did you stop any place?

A. Yes, sir, we did.

459 Q. Where?

A. Well, it was in Illinois right there where the canal zone was, we stopped and had coffee.

Q. Did Mr. Terry make a phone call at that time and place?

A. Yes, sir.

Q. Were you able to hear any of the conversation?

A. No, sir, I was not.

Q. You then don't know who he was talking to, I take it?

A. No, sir.

Q. You then drove to the levee?

A. Yes, sir.

Q. After the coffee?

A. Yes, sir.

Q. What did you do at the levee, if anything?

A. Well, it was a cold day. I just sat in the car, and there was a deputy—one of the deputy sheriffs came by.

Q. Incidentally, Mr. Zinn, are you an ex-wrestler too?

A. Yes, sir, not "ex", I still wrestle.

Q. Oh, you still wrestle?

A. Yes.

Q. Mr. Florence does not any more?

460 A. No, sir. He has retired from wrestling.

Q. Did you have a conversation with Mr. Fricker yourself?

A. No, sir; no. I was introduced to Mr. Fricker, but I never did.

Q. Whose car, did you stay in Mr. Terry's car?

A. Yes, sir.

Q. Front or back seat?

A. Back seat.

Q. Where did Mr. Florence go?

A. Mr. Florence, as I recall, was talking to the deputies down in their car. They were parked back of us down on the road farther.

Q. How many feet would you say?

A. Well—

Q. Oh, roughly.

A. Oh, I would say maybe a hundred feet, or something like that. I don't know just exactly.

Q. The length of this court room?

A. Yes, sir, I would say it was every bit the length of the court room.

Q. Was Mr. Terry with you at the Terry car?

A. Not at that time, no, sir.

Q. Where was he?

461 A. He was—I believe he was talking to the deputies, and Mr. Florence.

Q. Did you see any pieces of equipment around at that time and place?

A. Yes, sir.

Q. What did you see?

A. There was one piece of equipment working down

there on the levee—it was—I don't know—I'm not familiar with those things—bulldozer, "cat", something like that.

Q. Do you know who was operating it?

A. I didn't know at that time, no, sir.

Q. Have you since learned?

A. Well, I mean I met the gentleman here in the hall.

Q. Do you remember his name?

A. It was Harry something or other.

Q. All right. What happened, if anything, next on the levee, so far as people arriving and departing, after Mr. Fricker arrived, did anybody else arrive?

A. Well, I think there was another deputy arrived, and then I seen a car go by, and somebody—I think it was Mr. Terry—told me that was Mr. Green went by.

Q. What kind of a car did Mr. Green have?

462 A. I think it was a Cadillac.

Q. Did you talk with Mr. Green?

A. No, sir.

Q. Incidentally, do you see Mr. Green in the court room now?

A. Yes, sir.

Q. Would you point him out to the court and jury?

A. The gentleman sitting over there (indicating).

Q. Indicating, for the record, the defendant, Jack Green. Did you see anybody have a conversation with Mr. Green?

A. No, sir, I didn't.

As I say, I was sitting farther in the back seat, facing north, and they were back east of me.

Q. Was anybody sitting in the back seat with you?

A. No, sir.

Q. Then did this Cadillac leave?

A. Yes, sir.

Q. Was Mr. Green driving it?

A. Yes, sir, I believe it was Mr. Green.

Q. What happened next, if anything, on the levee?

A. Well, then there is—when the automobiles
463 started—that is, when the automobiles started coming out there, and a short time after that, I don't remember how long a time it was—

Q. Could you set an approximate time when you first noticed automobiles arriving, approximately?

A. Oh, it might have been a half hour or so. I wasn't paying any attention to the time out there.

Q. Could you give us an approximation as to whether it was early morning, middle of the morning, or late morning?

A. I would saw middle of the morning.

Q. Do you have any idea how many cars started to arrive?

A. No, sir, I don't.

Q. In relation to the cars that started to arrive, did men get out of them?

A. Yes, sir.

Q. What did the men do?

A. They came up to where the cars—where Mr. Terry's car was where I was sitting, and some went down to where the equipment was working.

Q. Now you were at the Terry car, is that correct?

A. Yes, sir.

Q. Where was Mr. Terry when the men started to arrive?

464 A. I think he was down with the deputy—where the deputies were in back.

Q. He came back?

A. He was down where the deputies were, with the deputies and Officer Florence.

Q. But you were at his car?

A. At that time.

Q. Now did Mr. Terry ever come back to the car that you were in?

A. Not then, no, sir. I left before then myself.

Q. Oh. Where did you go?

A. I went where the deputies were.

Q. Went with whom?

A. Back down on towards the road where the deputies were parked, talking.

Q. Oh, you went down to the deputies?

A. Yes, sir.

Q. Did you have a conversation with them?

A. Yes, sir.

Q. Just in your own words, tell us what events happened after that.

A. Well, I heard somebody say, "Surround this car!" Or, "Watch this car!" And then a bunch of the men went down to where the equipment was working 465 where this bulldozer, whatever it was, was working, and it stopped; and the operator got off and he came walking back up the hill, and I'm not sure—I think Mr. Terry went up to his car then, and I followed him up to his car, not with him, I mean I was going in that direction; and that is when they had the car surrounded and Mr. Terry was in the middle of them, close to the car, and there was a little scuffle there, I think somebody tried to strike Mr. Terry or something to that effect.

Q. Somebody tried to strike Mr. Terry?

A. Well, they were shoving around him, and somebody tried to strike Mr. Terry.

Q. Go ahead.

A. And Mr. Green hollered, "Let him alone. Let him go. Let him get out of here!"

Q. Did he use any term in reference to you?

A. Yes, he did. Yes, I think he called me a gun slinger; gat slinger, something to that effect.

Q. Well, what were his exact words when he used that term "gat slinger?" Do you remember?

A. Well, I think he said, "Let him go!" Or, "Let him go" and to get the hell out of here and let him take his
466 gat slingers with him. Something to that effect. The exact words I don't know just how he did put it.

Q. Did you see Mr. Green at that time and place?

A. Yes, sir.

Q. Was he talking?

A. Mr. Green shouted out to the men, that is the reason—I mean all of the men were talking there, back and forth and everything, and you couldn't make out what was going on, but you could hear Mr. Green as he hollered for the men to leave Mr. Terry go.

Q. Well, do you remember anything specific that Green said to Terry, not a complete sentence or anything? Do you remember some of the words, or could you describe those words?

A. No, sir, that is all I know.

Q. Well, did you hear any profanity?

A. Yes.

Mr. FitzGerald: Just a moment. I object to that.

The Court: I think he may answer. He said yes.

By Mr. Oxtoby: Q. Did you say "Yes."?

The Witness: Yes, sir.

467 Q. By Green?

A. No, sir.

Q. By whom?

A. Well, the men that was around there, they were all talking among themselves, cursing this, that, and the other thing.

Q. All right. What did you do next, if anything?

A. As soon as Mr. Green said, "Leave him go!" the deputy sheriff said for us "You had better get out of here."

Mr. Terry got into the car. I also got into the car in the back seat, and we drove away. And we left Mr. Florence there.

Q. Now as you drove away, did you hear anything in relation to the automobile that you were in?

A. Well, it made some noise like—from the men that was around it.

Q. Like what?

A. There was some noise on the automobile.

Q. Like what?

A. Oh, like somebody might have been hitting the automobile, something like that.

Q. Where did you drive to with Mr. Terry?

A. We drove up onto the bridge.

468 Q. Did you keep on going, or what?

A. No. We heard a car horn behind us, and it was Mr. Florence and one of the deputies, and Mr. Terry stopped and Mr. Florence got in the car.

Q. Did Mr. Terry do anything while he was on the bridge?

A. At that time he took some pictures, yes, sir.

Q. After Mr. Terry took the pictures, what did you do then, if anything?

A. We drove to St. Louis, and we went to some Engineers' office, and Mr. Terry explained to them what took place, to the gentlemen in the office there.

Mr. Oxtoby: That is all.

Cross Examination by Mr. FitzGerald.

Q. When Terry went to this Engineers' office in St. Louis, were you in in the same room with him when they talked to the Engineers?

A. Part of the time, sir; yes, sir.

Q. After he had talked to them, were they all laughing?

A. Yes, sir, they thought it was a joke.

Q. Including Terry?

A. Yes, sir.

Q. Now how long was it that Terry stopped on this
469 bridge to take the pictures?

A. Well, it wasn't very long.

Q. Well, would it be ten minutes, fifteen minutes?

A. No, I would say five minutes, sir.

Q. He also had waited there after he had heard the honk of the horn of the car Florence was riding in, is that right?

A. Sir?

Q. He waited until the car that honked came up?

A. No, he was in motion until the car horn blew, and then we seen it was Mr. Florence and a deputy. He then stopped the car.

Q. Was that after he had taken the pictures or before?

A. No, he then took the pictures when he stopped the car to let Mr. Florence get in, he then took the pictures.

Q. While you were there, had Jack Green ever come over to the vicinity of the Terry car at any time until shortly before you and Mr. Terry left the car?

A. Had he came up over to the vicinity of the car?

Q. Yes.

A. Not to my knowledge, sir.

Q. The first time that you had heard Green saying anything was when he told the men to let him alone and
470 go back to their work, or something of that sort?

A. Yes, sir.

Q. And that was when you and Mr. Terry did leave there, wasn't it, Mr. Zinn?

A. Yes, sir.

Q. Now you say that there was some scuffling and someone tried to hit Terry or something like that?

A. Yes, sir.

Q. You didn't see anybody strike him or anything?

A. No, I did not.

Q. Did he have a gun in his pocket when he got out of the car?

A. Not that I know of, sir.

Q. Do you know a man by the name of Mr. Lehman who was the Government inspector on that job that Mr. Terry was performing?

A. I have met him since then here, sir, but I didn't know him at the time, no, sir.

Q. But you have seen him here, haven't you?

A. Yes, sir.

Q. Did he come up to the vicinity of the place where Mr. Terry was at any time before you and Mr. Terry left there that morning?

471 A. Yes, sir.

Q. Were you near Mr. Terry at the time when Lehman came up?

A. No, sir, I was in the car, and Mr. Lehman drove up in a pick-up truck, I believe.

Q. How far away from Mr. Lehman and Terry were you at that time? Or how far away from you were they, if that is more accurate?

A. Well, I think when Mr. Terry was talking to Mr. Lehman, at that time I was with the deputies, down with the deputies.

Q. So you didn't hear their conversation at all?

A. No, sir.

Mr. FitzGerald: That is all.

Redirect Examination by Mr. Oxtoby.

Q. Who was giving all of the orders and directions out on the levee? Who was in charge of the people who were out there, so far as you could tell?

Mr. FitzGerald: Now if the Court please, that question contains a very vile assumption, that there was someone in charge.

472 Mr. Oxtoby: That is all, Mr. Witness. Thank you, Officer.

Mr. FitzGerald: Just a moment. I am objecting to the question.

The Court: Objection is sustained.

You may be excused.

(Witness excused.)

The Court: We will take a recess.

(Whereupon a recess was taken.)

473 WILFORD ANDERSON, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Stoddart.

Q. Will you state your name, please?

A. Wilford Anderson.

Q. Mr. Anderson, please talk loudly enough so that each juror can hear you. Will you, please?

Your name is Wilford Anderson, is that correct?

A. That is right.

Q. Now where do you live?

A. Granite City, 4412 Moiniokee Road.

Q. What is your business?

A. Right at the present time, unemployed.

Q. What were you doing in April of 1953?

A. I was working for Austin Company, at Dow Chemical.

Q. Were you affiliated with a labor union at that time?

A. Yes, sir.

Q. What labor union were you affiliated with?

A. Local No. 397.

474 Q. Granite City, Illinois?

A. Yes, sir.

Q. Do you know the business agent of this union?

A. Yes, sir.

Q. What is his name?

A. Jack Green.

Q. In what capacity were you employed by the Dow Chemical Company in April of 1953?

A. I was a labor foreman.

Q. Would you tell the duties of a labor foreman?

A. Well, you work under a general foreman, and in the morning he generally has a list of work that he would like for you to get done, and you start working on what you have.

Q. How many men would be under your supervision, Mr. Anderson?

A. Oh, I guess around—average maybe twenty.

Q. What trade would they be members of?

A. Laborers.

Q. That would be common laborers, hod carriers union?

A. That is right, laborer.

Q. Do you know whether or not the men under you at that time were members of No. 397?

A. No, they all weren't.

Q. They all weren't?

475 A. They weren't.

Q. Do you know whether or not they were working as permit workers from 397?

A. Permit workers, yes, sir.

Q. Directing your attention to April 13, 1953, which I believe was a Monday, did anything unusual happen on that morning?

A. Well, yes. We were told to report to headquarters.

Q. The union headquarters?

A. That is right.

Q. Who told you to report to union headquarters?

A. I don't remember.

Q. Did the person who told you to report to union headquarters indicate the purpose?

A. No, sir.

Q. What did you do as a result of that order to report to the union headquarters?

A. We done just that, we reported to union headquarters.

Q. How many would you estimate of the men that you supervised went to the union headquarters?

A. I imagine all of them.

Mr. FitzGerald: Not what you imagine. If he has 476 any information about it—

By Mr. Stoddart: Q. Did you go to the union hall?

A. Yes, sir.

Q. Where is that union hall?

A. At 20th Street and the railroad, or 20th Street crossing, West 20th.

Q. Did anybody go with you?

A. Yes, sir.

Q. Who went with you?

A. Merrill Lindsey and Ben Treater.

Q. Do you know whether or not they were members at that time of Local 397?

A. They were.

Q. When you arrived at the union hall, what occurred, if anything?

A. Well, when I arrived at the labor hall, everything was practically over with so far as any arrangements or anything like that. I was blocked by a train I guess for maybe fifteen or twenty minutes, and I never got to the union hall until the fellows were starting away.

Q. When you arrived at the union hall, did you see the defendant Jack Green?

A. Yes.

477 Q. Where was he, Mr. Anderson?

A. Out on the sidewalk in front of the union hall.

Q. Whom was he talking to, if you know?

A. I believe Pete Paradadi.

Q. Go ahead.

A. And Rolla Urham.

Q. Were there any other people around the union hall at that time?

A. There was four or five hundred, I guess.

Q. What did you do next?

A. Well, I went back to the car and followed the crowd.

Q. How did the crowd leave the union hall?

A. Just went one right after another in their automobiles.

Q. In a caravan?

A. That is right.

Q. Did you know where you were going?

A. I heard that we were going to the canal at the Chain of Rocks, at the bridge at the canal.

Q. Did you know why you were going?

A. No, I didn't.

Q. Did the entire crowd that you followed proceed to the Chain of Rocks canal project?

478 A. That is right.

Q. Did they all stop at a certain place?

A. Well, there is two ways you can get there, and they come in from various ways.

Q. Would you estimate the size of the crowd at the place where you stopped?

A. Oh, I imagine three or four hundred.

Q. Now on that occasion, did you see Mike Parmelee at either the union hall or at the project scene?

A. Mike Parmelee?

Q. Yes.

A. That is, no, no. Mike is more or less crippled, I don't know that I recall seeing him.

Q. Did you see Herbert Parson?

A. I didn't know him.
Q. Did you see C. Smallwood?
A. C. Smallwood?
Q. Yes.
A. No.
Q. Did you know him?
A. No, I don't believe I know him.
Q. Do you know Guy Paislee?
A. Yes.
Q. Did you see him on that occassion?
479 A. No.
Q. Did you see William Nowd?
A. No.
Q. Do you know Cliff Stevens?
A. Yes, sir.
Q. Did you see him on that occasion?
A. No, I never saw him after I left the Dow Company.
Q. Did he work with you at the Dow Chemical?
A. Yes, sir, he was my general foreman.
Q. Did you see Jack Green at the project?
A. Yes, sir.
Mr. Stoddart: Your witness.
Mr. FitzGerald: No questions.
(Witness excused.)

480 FRED BEHREND, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Oxtoby.

Q. What is your name, please?
A. Fred Behrend.
Q. Where do you live?
A. Edwardsville, Illinois.
Q. Edwardsville, Illinois?

A. Yes, sir.

Q. How long have you lived at Edwardsville?

A. All my life.

Q. Where are you presently employed?

A. Unemployed at the present.

Q. Mr. Behrend, are you a member of a union?

A. Yes, sir.

Q. What union do you belong to?

A. The Hod Carriers and Laborers of Edwardsville, 179.

Q. Now in April of 1953 where were you employed?

A. At the Dow Chemical, for the Austin Construc-
481 tion Company.

Q. Will you talk a little bit louder, so they can all hear you back here.

A. All right.

Q. At that time were you working under the jurisdiction of 397?

A. Yes, sir.

Q. As a permit worker?

A. I guess that is what you would call it.

Q. Well, did you belong to Local 397 in April of 1953?

A. No, sir.

Q. Directing your attention to your employment for the Austin Company at the Dow Chemical, who was your foreman in April of 1953?

A. Dale Skeen.

Q. How many other laborers were under the supervision of Mr. Skeen?

A. I wouldn't be able to answer that, I don't know.

Q. Do you know whether or not Mr. Skeen was an officer of 397?

A. I don't know that, no, sir.

Q. On April 13, 1953, did you have a conversation with Dale Skeen?

A. If I was there, I guess I did, sir. I wouldn't
482 know.

Q. Well, this is the incident in which this case is about, which occurred on or about April 13, and I am referring to a conversation with Mr. Skeen that occurred that morning with respect to leaving the hall. Did you have a conversation with him on any matter such as that?

A. Yes.

Q. State to the jury your best recollection as to the substance of that conversation.

A. Well, he told me to lock up the store room and come down to the hall.

Q. Did he say anything else with reference to what the purpose of going to the hall was?

A. No, sir, he did not.

Q. Did he say anything with respect to who told him to call this meeting?

A. I believe he said Jack called it.

Q. By "Jack" whom do you mean?

A. I wouldn't know, that is all I can tell you, sir.

Q. What did you do after you had this conversation with Mr. Skeen?

A. I locked up the stockroom and got my two riders and went down to the hall.

483 Q. Who went with you down to the hall?

A. Merrill Jones and Lester Hydron.

Q. Do you know whether or not they were members at that time of Local 397?

A. No, they were a member of the same local as I was from, of Edwardsville.

Q. Out of Edwardsville?

A. Yes, sir.

Q. Did you drive to the union hall?

A. Yes, sir.

Q. When you arrived, what did you see with respect to people or identities of persons?

A. There was a group of men—people in cars there.

Q. How many would you estimate?

A. I wouldn't estimate, I didn't count them, sir.

Q. Can't you give the jury some idea?

A. Sir, I did not count them. I would hate to estimate them, sir.

Q. Did you see Mr. Green there?

A. No, sir, I did not.

Q. Did you see Dale Skeen?

A. Yes, sir.

Q. Did you have any conversation at the union hall with Mr. Skeen?

A. Yes.

484 Q. Tell the jury your recollection as to the substance of that conversation.

A. Well, he told me to get in my car and follow the group of cars.

Q. Did he say where you were going?

A. No, sir, he did not.

Q. Did he say for what purpose you were going?

A. No.

Q. What did you do?

A. I did what he asked me.

Mr. FitzGerald: How many questions? Let's have one at a time.

Mr. Oxtoby: This is not a double question.

Mr. Stoddart: He has been answering them one at a time.

By Mr. Oxtoby: Q. What did you do?

A. I did not ask—he told me to.

Q. What was that?

A. Got in my car and followed the group, of course.

Q. Where did the group go?

A. Out on the canal levee.

Q. What did you do when you arrived there?

A. Got out of the car, went up on the levee.

Q. Did you see Dale Skeen out on the levee?

485 A. Oh, yes.

Q. Did you talk to him at the levee?

A. No, sir, I didn't.

Q. Did you see Jack Green at the levee?

A. I saw Jack at a distance, not close.

Q. Do you know how many people were at the levee?

A. No, I don't, no.

The Court: You have to speak louder in here, because he is taking your notes, and he can't watch your head.

Cross-examine.

Cross-Examination by Mr. FitzGerald.

Q. Mr. Behrend, you were not armed, were you, when you went out there?

A. Sir?

Q. Did you have any revolver or other firearms on you?

A. No, sir.

Q. No one told you, in any way, to do any violence to anyone out there?

A. No, sir.

Q. Did you see any violence out there?

486 A. No, sir.

Mr. FitzGerald: That is all.

Mr. Stoddart: That is all. Thank you very much.

(Witness excused.)

The Court: Call the next.

487 WALTER WILLIAM WOODSWORTH, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Stoddart.

Q. What is your name, please?

A. Walter William Woodsworth.

Q. Mr. Woodsworth, would you talk loud enough now so that each member of the jury can hear you. It is a little hard to understand a witness in this court room.

How old are you, Mr. Woodsworth?

A. Thirty years old.

Q. Where do you live?

A. 2925 Cayuga, Granite City.

Q. How long have you lived in Granite City?

A. All my life.

Q. Are you a married man?

A. I am.

Q. Mr. Woodsworth, where are you presently employed?

A. Granite City, Police Department.

Q. On or about April 13, 1953, where were you employed?

488 A. Dow Chemical Company.

Q. At that time were you affiliated with any trade union?

A. I was.

Q. Will you tell the jury what union you belonged to at that time?

A. Edwardsville, Local 179.

Q. At Edwardsville, Illinois?

A. That is right.

Q. At that time, where were you employed?

A. Dow Chemical.

Q. That is in Granite City?

A. That is in Madison.

Q. Madison?

A. Yes.

Q. Under what union's jurisdiction would you be working at the Dow Chemical?

A. That would be 397.

Q. Did you belong to Local 397 at that time?

A. I did not.

Q. Were you what is known as a permit worker under the jurisdiction of 397 at that time?

A. I don't know if I was a permit or not, I was working out of 179.

489 Q. Well, did you pay dues or any moneys to the local 397?

A. I did.

Q. During the time that you were employed in that area?

A. Yes.

Q. Mr. Woodsworth, directing your attention to the morning of April 13, 1953, which was a Monday morning when you were employed at the Dow Chemical Company, did you have a conversation with Dale Skeen?

A. He was my foreman.

Q. Well, did he talk to you about anything unusual that morning?

A. No, he never.

Q. Well, did he talk to you anything about a meeting?

A. No, he never.

Q. Well, did anybody talk to you about a meeting that morning?

A. Did anybody talk to me about a meeting? They did not.

Q. What did you do that morning?

A. I went in and went to work.

Q. Did you work all morning long?

A. No, I never.

490 Q. What did you do?

A. We left the job.

Q. Where did you go?

A. We went out on the canal.

Q. Did you go any place else before you went to the canal?

A. We went up to labor headquarters.

Q. Who went with you?

A. Oh, I went by myself up there.

Q. Prior to going there, how were you informed you were to go to the labor union headquarters?

A. Well, somebody made the remark that we was either going fishing, or was going home; and then when we got started, they said we were going to the hall.

Q. Do you know who made that remark?

A. I don't quite remember who did make that remark.

Q. You know Dale Skeen, do you not?

A. I do.

Q. Was he your foreman on that morning?

A. He is.

Mr. FitzGerald: He has answered all that. Object to repetition.

The Court: I think he said he was. Go ahead.

491 By Mr. Stoddart: Q. You say you went to the union hall alone, is that correct?

A. That is right.

Q. And you say you did not have any conversation with respect to going to the union hall with Dale Skeen that morning, is that correct?

Mr. FitzGerald: I object to this, if the Court please.

The Witness: I don't believe I did.

The Court: I think he may answer. I think he said he didn't, as far as that is concerned.

The Witness: As far as I can remember, I did not.

Mr. Stoddart: Well, now, your Honor, I would like to refresh his recollection, if I may.

Mr. FitzGerald: If the Court please, he is their witness.

Mr. Stoddart: I understand he is my witness. I called him.

Mr. FitzGerald: I am not talking to you. I am talking to the court.

The Court: Go ahead.

By Mr. Stoddart: Q. I would like to refresh your
492 recollection and ask if you remember a statement that you gave to Agent Granfield on September 1, 1953.

A. I remember.

Q. An Agent of the FBI?

A. I don't know who he was, I don't remember.

Q. Well, this gentleman sitting right here at the table, back there (indicating), do you recall now?

A. This man in the gray suit?

Q. Yes.

Stand, Mr. Granfield.

Do you remember talking to him, giving him a written statement about this case?

A. Yes.

Q. To refresh your recollection now, do you remember at that time that you told him that you were a tool room mechanic at the Dow Chemical Company, and at about 9:00 a.m. one morning in April, 1953, Dale Skeen, the shop steward, came up and said, "We are going to the hall," and that he had to tell the rest to go to the hall? Do you remember telling that to Agent Granfield?

A. If I told him that, that is what it was.

Q. Does that refresh your memory now?

493 A. Yes, it does.

Q. So you can testify to the jury?

A. That is right.

Q. Now did you have any conversation that morning with Dale Skeen?

A. If he come up there, he come up there and just said something and went back.

Q. Well, what did he say to you, now, Mr. Woodsworth?

Mr. FitzGerald: He has already testified.

The Court: If he knows, he may state. Go ahead.

The Witness: I believe he said, "We are going to the hall."

By Mr. Stoddart: Q. Mr. Woodsworth, when you got to the hall, what did you do?

A. Well, we waited in a big room.

Q. How many people were there?

A. I really don't know, but I guess there was two, three hundred.

Q. Did you see Jack Green at the hall?

A. I believe I did.

Q. Did you see Dale Skeen?

A. No.

Q. When you saw Jack Green, what was he doing, if anything?

A. Well, he wasn't doing nothing that I knew of. He was just out in a bunch.

Q. Did you see Jack Green come out of the hall with any people?

A. No, I never.

Q. Did you hear Jack Green say anything at that time?

A. Not that I know of.

Q. Well now, again to refresh your memory, Mr. Woodsworth, directing your attention to the statement you gave to Agent Granfield, do you recall telling Agent Granfield that after twenty or thirty minutes elapsed, you saw Jack Green come out of the Union hall with five or six other fellows, that these five or six fellows got in a car and left; Jack talked to them before they left for a few

seconds, that the only one in the car whose name you remember was Pete Paradadi, that Jack walked around the crowd for ten or fifteen minutes and he said to follow the cars out to the new bridge over the canal because there was a "rat" contractor who wouldn't put a laborer on the rig that was operating, that he said to circle the rig so the rig wouldn't operate, that he told us he didn't want
495 any rough stuff.

Do you remember saying that to Agent Granfield?

A. One part of it was not quite clear in there.

Q. Well, does that refresh your memory now?

A. Yes, that is right.

Q. As to whether or not Jack Green said anything at that time?

A. That is right.

Q. Would you say that was in substance what Jack Green said?

A. I wouldn't say that is all of it.

Q. Well then, what did you do as a result of that?

A. I did just what I was told to do.

Q. Where did you go?

A. We went out to the Chain of Rocks canal.

Q. What did you do when you went out there?

A. Parked my car and went on top of the levee.

Q. Then what did you do?

A. If I remember right, there was a rig down there and we made a circle around it.

Q. What happened with respect to the operation of that rig?

A. Well now, when I got there it had already
496 stopped, and the operator was off of it.

Q. Did you see Jack Green?

A. Out there?

Q. Yes.

A. I did.

Q. Did you see Dale Skeen?

A. I did not.

Q. Do you know how many people were out there?

A. I would say two or three hundred.

Mr. Stoddart: That is all.

Cross-Examination by Mr. FitzGerald.

Q. Mr. Woodsworth, when you got out there, did you hear anybody threaten anyone out at the levee?

A. I did.

Q. You heard threats?

A. What?

Q. Who was it? Where was it, do you know?

A. Amos Kleekamp, I don't know how you spell his name.

Q. Where was he? Was he near you at that time?

A. No, I just happened to be passing by.

Q. And Jack Green wasn't there, wasn't near there 497 at that time, was he?

A. He may have been, I don't recall.

Q. Where was he when you saw him out on the levee?

A. When was it?

Q. Where was he when you saw him?

A. Right on top of the levee, I believe, right on top of it.

Q. Where was Kleekamp when this threat was made, do you remember?

A. He was on top of the levee, that is what I was talking about.

Q. Was Green near him, as you remember it, at the time you heard him threaten someone?

A. I don't recall.

Q. You didn't see him near him at that time?

A. I have seen him up there, but I don't remember if it was then or not. He was there, but I don't remember if he was there then or not.

Q. He had said to you down in the hall, "I don't want any trouble out there," or that in substance?

A. That is right.

Q. Did you hear him out there tell the men to go back to work, that he did not want any trouble?

A. I did not.

498 Q. Were you there when the Terry car left?

A. I wouldn't know if it was his car or not.

Q. Do you remember a car being up on top of the levee near the place that access road comes up there, and which finally went away before the fellows that were out there had left? Did you see that car?

A. I seen a car up there, yes.

Q. Were you over near that car at any time?

A. No, I wasn't near it.

Q. Kleekamp wasn't near that car when he made a threat, was he?

A. No.

Q. What did he say?

A. Oh, he said something about if the guy had a gun, what he would do with it.

Q. He said what?

A. If this guy had a gun, what he would do with it.

Q. Did you know to whom he was referring when he said if this guy had a gun he would get him, or something like that?

A. I don't know who he was even talking to.

Q. The statement that he made was that if this guy had a gun, he would get him, or something?

499 A. He would jam it down his throat or something like that.

Q. Jam it down his throat, that is all you heard out there?

A. That is right.

Q. Did you see any violence or anything of that kind out there?

A. I did not.

Q. Is Mr. Kleekamp now living?

A. He is dead.

Q. He is dead now?

A. Yes.

Mr. FitzGerald: That is all.

Mr. Stoddart: Thank you, Mr. Woodsworth.

The Court: Call the next.

You are excused.

(Witness excused.)

500 WILLIAM BAUER, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Stoddart.

Q. State your full name, sir.

A. William B. Bauer.

Q. We have a recital going on, Mr. Bauer, so you will have to talk loud enough over that music from outside so each juror can hear you. Can you hear me, Mr. Bauer?

A. I will talk loud enough.

Q. You can hear me all right?

A. Maybe I don't hear so good, you know.

Q. Well, I will come over here and talk to you, and then you can talk to the jury. How is that?

A. All right.

Q. Where do you live?

A. Freeburg, Illinois.

Q. How old are you, Mr. Bauer?

A. I am going to be 62 years old this fall.

Q. Are you presently employed?

501 A. No,—right now I am, yes.

Q. Where are you working now?

A. I am working for Moore Brothers on a bridge at Freeburg, Illinois.

Q. Are you a member of a union?

A. Of Freeburg, Freeburg Local, yes, sir.

Q. What trade is that that you are a member of?

A. That is common laborers, laborers union.

Q. Now Mr. Bauer, directing your attention to back to April of 1953, where were you working at that time?

A. I was working for the Dow Chemical Company, the Austin people was the builders, though.

Q. That was where they were building this building?

A. At Madison, Illinois.

Q. When you worked there, were you under the jurisdiction of any union at that place?

A. Yes, sir.

Q. What union were you under the jurisdiction of?

A. Granite City.

Q. Is that Local No. 397?

A. That is right.

Q. Did you ever belong to Local 397?

A. No, sir.

Q. Did you have to pay dues to work there?

502 A. Well, I didn't pay those dues. I paid permit money.

Q. I see. To the local union at Granite City, is that right?

A. Yes, sir, that is right.

Q. What did you do at the Austin Company, what kind of work did you do?

A. Well, I was firing boilers there for the heating plant, and in between I do a little janitor work, especially if the weather wasn't too cold.

Q. Who was your foreman?

A. Dale Skeen.

Q. How many people worked under Dale Skeen?

A. How many men he had?

Q. Yes. Do you remember?

A. Well, that is hard to tell. I couldn't answer that question, I don't know.

Q. On Monday morning, April 13, 1953, did Dale Skeen come up and talk to you about anything unusual?

A. Yes, sir.

Q. What did he say to you, and what did you say to him, the best you can recollect?

A. Well, I tell you what happened that morning. Generally on a Monday morning, I would clean out
503 the rest rooms. That morning I was mopping out the rest rooms, and I just happened to open up the door—he must have been looking for me—and when I opened up the door, he says, "Oh," he says, "there you are. Drop everything and come with me."

So I looked at him, it just kind of got me.

He says, "Drop everything and come with me."

So I set the mop down and went with him.

He told me, "Go get your bucket." So I went and got the bucket. I didn't know where he was going to take me, and I didn't ask.

Q. Well, where did you go?

A. I went up towards the union hall.

Q. When you got to the union hall, who did you go with?

A. Well, I walked up to the union hall with Dale Skeen part of the way.

Q. I see. Did anybody else go with you?

A. Yes, his son.

Q. What did Dale Skeen do when he got to the union hall?

504 A. Well, Jack Green met him there.

Q. Were you standing near him?

A. No, Jack Green, he—I mean Dale Skeen, he walked up to Jack, and then they walked away, and I kept standing on the sidewalk.

Q. Then what happened next?

A. Well, what happened next there, well, I was standing.

Q. Describe what happened. Was there a lot of people around there that morning?

A. That is right, there were lots of working men around there that morning.

Q. How many would you say, Mr. Bauer?

A. Well, I would say a couple of hundred.

Q. Did you have any meeting there?

A. No, not me.

Q. Did anybody talk to you about what was going to happen?

A. No.

Q. Well, what did happen? Where did you go?

A. Well, I went up—after we left the hall, we went to the Chain of Rocks bridge.

Q. Whom did you go with?

A. I went up there with a fellow by the name of 505 "Red," you see, I was standing there on the sidewalk before I got in the car, and a fellow by the name of "Red" from Hardin, Illinois, asked me if I wanted to go along up there.

I told him I didn't care, so I went up there.

Q. Did you know why you were going?

A. No, I didn't know why I was going.

Q. Did you know where you were going?

A. The only think I knew was Chain of Rocks bridge. I never knew where Chain of Rocks bridge was.

Q. Did you ever hear of Mr. Terry that day?

A. Not that day.

Q. Now, when you arrived, Mr. Bauer, at the union hall

with Dale Skeen and Jack Green met him, what did Jack Green say to Dale Skeen?

A. He says, "Where have you been?" He says, "Come on." He says, "Where have you been?"

Q. Did he say anything else?

A. No, that is about all I know he said.

Q. Did he make any motion?

A. He says, "Come on!" He says, "Where have you been?" And so Dale—he walked up pretty fast and I kept standing.

506 Q. What is Dale Skeen's son's name, do you know?

A. No, I don't know.

Q. Did you hear Green say anything before you went out to the Chain of Rocks?

A. Yes.

Q. What did he say?

A. Well, he says, "Surround the Hy-lift!"

Q. Did he say anything else, Mr. Bauer?

A. Yes. He also says, "The deputy sheriff—" that the sheriff was out there, "Don't pay any attention to him!"

Mr. Stoddart: Your witness.

Cross-Examination by Mr. FitzGerald.

Q. Did he say anything else besides that, Mr. Bauer, that you remember?

A. What did you say?

Q. Did Jack say anything else besides what you told us?

A. No, sir, not that I know of.

Q. Did you hear him say, "We don't want any trouble out there!"?

A. Trouble?

507 Q. Yes.

A. No, I never heard him say there was trouble out there.

Q. No. Did he say that they did not want any trouble?

A. No, I never heard him say that.

Q. You didn't hear him say that?

A. No, that is all I heard him say then.

Q. When was that when he first talked with Skeen, or afterwards?

A. It was afterwards. You mean after I went up to the hall, after Jack—

Q. Yes.

A. That was after Skeen—after Jack picked up Skeen, yes, that was after that.

Q. And they went into the labor building while you were waiting?

A. Well, I can't tell you where they went. They just walked up the walk. I wasn't watching.

Q. And you did not go into the building?

A. No, sir.

Q. All Jack said was to surround—whatever you call it—the machine?

A. The Hy-lift.

Q. (Continuing.) —the Hy-lift?

508 A. That is right.

Q. And to pay no attention to the deputies?

A. That is right.

Mr. FitzGerald: I think that is all.

Mr. Stoddart: Thank you very much, Mr. Bauer.

The Court: You may be excused.

(Witness excused.)

509 PEARL G. KETCHAM, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Stoddart.

Q. What is your name?

A. Pearl G. Ketcham.

Q. Please talk loud enough so each member of the jury can hear you. It is a little hard to understand people in this court room.

A. All right, sir.

Q. Where do you live?

A. I live at 712 East Schwartz Street, Edwardsville, Illinois.

Q. How long have you lived in Edwardsville?

A. I moved there in 1942.

Q. Where are you presently employed?

A. I am not. I have not been since the 29th of August.

Q. I see. Are you a member of a trade union?

A. Yes, sir. I belong to Edwardsville Local 179.

Q. Is that the Hod Carriers and Common Laborers Union?

510 A. Yes, sir.

Q. In April of 1953, where were you employed?

A. I was working for the Rust Engineering at Granite City.

Q. That is Granite City, Illinois, is that correct?

A. Yes, sir.

Q. Did you belong to Local 397 at that time?

A. No, sir.

Q. Did you have a permit to work out of the jurisdiction of Local 397?

A. Yes, sir.

Q. What was the nature of your employment for the Rust Engineering Company?

A. I was employed as a hodcarrier.

Q. Did you have a foreman?

A. Yes, sir.

Q. Who was your foreman?

A. Clyde Boyd.

Q. That is B-o-y-d, is that right?

A. I believe so.

Q. Directing your attention to Monday morning, April 13, 1953, did Clyde Boyd talk to you about anything unusual that morning?

511 A. No, sir.

Q. Did he have a conversation with you with respect to a meeting?

A. No.

Q. Well, did anyone?

A. No.

Q. What did you do that morning?

A. I was fixing fire clay in a tunnel. I was sort of isolated from the rest of the workers, and as they needed this, we called "soup" because it is thin like buttermilk, and instead of spreading it with a trowel, they dip it, and the other hod carriers would come to the tunnel that hole—I don't know, 15, 16 feet down, I guess, and we had a wheel with a rope, and when they would come and holler "Two soup!", why I filled two buckets and sent them up. A lot of times I never knew who come and got it. I couldn't see up there.

Q. What did somebody come and holler something at you, is that what happened?

A. Yes. Somebody say, hollered, say, "Pearl!" Hollered, "Jack Green wants to see you down at the hall!"

Q. Well, what did you do?

512 A. Well, I wore coveralls to protect my work clothes because that job was a little messy. Well, I just took off my union-alls, and wrapped them in a little bundle,

put them under my arm, my lunch bucket was down here, I got it, I climbed a straight steel ladder.

When I got up to the top, I saw no one except bricklayers.

Q. Well, did you talk to anybody about that lunch bucket?

A. No, I took it with me. So I went out to the parking lot.

Q. Yes. What happened out there?

A. Well, I went to the car that I rode down there in that morning, and in that car, that car wasn't there where it was parked. There was no one else in the parking lot. So I must have waited ten or fifteen minutes before I saw anyone coming. I was looking for a ride down to the hall.

Q. Well, did you check with your foreman before you left that morning?

A. No. I didn't see him.

Q. You didn't see him around the place, is that right?

A. No. I didn't see him. When I came up out of
513 the hole, that is what I am talking about.

Q. Did you check out of the place of your employment?

A. Yes, sir.

Q. Were any other laborers checking out at the same time?

A. No.

Q. You checked out by yourself?

A. Yes. It seemed like I was the last, as far as I know.

Q. Now, when you got down to the union hall, what was going on?

A. Well, I never got close enough to ascertain what was going on.

Q. Did you see Jack Green down there?

A. Well, as we were approaching, approaching the rear of the people who was there, I did see him just go around

to the corner of the building, apparently, I think, he went inside the hall.

Q. Well, what did you do then?

A. Well, I don't know. I was talking to some fellow there beside me, and I said, "What is this all about?"

He didn't know.

I had heard that question among a lot of the fel-
514 lows that was there. There was fellows there, fellows

I didn't know.

And, well, it wasn't very long until a group of them way in the front turned around, that was coming back the way we were, and said, "We are supposed to go out to the Chain of Rocks bridge."

Why, I don't know.

Q. Did you see Clyde Boyd there?

A. No, I didn't see him at the hall.

Q. Did you go to the Chain of Rocks bridge?

A. Yes, sir.

Q. Did you know where you were going when you left?

A. Well, this bunch said that we were supposed to go there, and I went out with the same fellow that I rode with.

Q. Do you know why you were supposed to go?

A. No.

Q. Did you see Green out at the Chain of Rocks bridge?

A. No.

Q. Or any place out there?

A. No, I didn't.

Mr. Stoddart: Your witness.

515 *Cross-Examination by Mr. FitzGerald.*

Q. Mr. Ketcham, as I understand your testimony, somebody told you that Jack Green wanted to see you, and you came out of the place you were working, went down to the hall, talked to people there to find out what it was all about, and no one seemed to know.

A. No, I didn't know.

Q. And no one else told you about that?

A. No.

Mr. FitzGerald: I think that is all.

Mr. Stoddart: Thank you very much.

The Court: I think we will stop at this point.

Ladies and gentlemen, be back promptly at one-thirty this afternoon.

(Witness excused.)

(Whereupon these proceedings in the above-entitled case were recessed until 1:30 a'clock p.m. of this same day, Friday, September 17, 1954.)

516 Court reconvened in the above-entitled cause at the hour of 1:30 o'clock p.m., September 17, 1954, pursuant to recess.

Present:

Same as before, to-wit:

Mr. Alexander, Mr. Oxtoby, and Mr. Stoddart, appearing on behalf of the Government;

Mr. O'Neill and Mr. FitzGerald, appearing on behalf of the defendants.

517 GEORGE EDWARD WILLMIRTH, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Stoddart.

Q. What is your name, please?

A. Edward Willmirth.

Q. Mr. Willmirth, please talk loud enough so each juror can hear you. Now it is hard to understand you in this court room.

Where are you presently employed?

A. Decatur, Illinois, J. C. O'Connor Company.

Q. Where do you live?

A. Keyesport, Illinois.

Q. Are you a member of a trade union?

A. Yes, sir.

Q. What union do you belong to?

A. Local 159, Decatur.

Q. Directing your attention to April of 1953, where were you employed?

A. In Granite City Steel.

Q. Where is that?

A. Granite City.

518 Q. Illinois?

A. Yes.

Q. At that time, what union did you belong to?

A. Greenville Local, 633, if I'm not mistaken.

Q. Were you working under the jurisdiction of Local 397 at that time?

A. Yes, sir.

Q. Did you belong to Local 397 at the time you were working at the Granite City Steel?

A. No, sir.

Q. Who was your immediate foreman at Granite City Steel?

A. Elmer Graft.

Q. Who was the assistant foreman, if you remember?

A. They had no assistant foreman under him.

Q. What were the nature of your duties with Granite City Steel?

A. I was with the track gang, but I was swamping on a cherry picker.

Q. I don't believe we can quite hear you.

A. I say I was with the track gang, but I was swamping on a cherry picker.

Q. Were you engaged in construction work at that time?

A. Yes, sir.

519 Q. Specifically directing your attention to Monday morning, April 13, 1953, did you have a conversation with an Amos Bildearback?

A. Well, I wouldn't call it a conversation.

Q. Well, what was said by him and what did you say?

A. Well, he just told me to report to the hall.

Q. Report to where?

A. Union Hall.

Q. Is that Union Hall 397?

A. Yes, sir.

Q. In Granite City, Illinois?

A. Yes, sir.

Q. Did he tell you why?

A. No, sir.

Q. Did he say anything else with respect to reporting to the hall?

A. That is all.

Q. What did you do?

A. Went to the hall.

Q. Whom did you go with?

A. Well, it was—we went—you want to have the names I was riding with or what?

Q. Yes.

A. Well, Mears Carver—

520 Mr. FitzGerald: I am sorry. I don't hear you.

The Court: Speak a little louder.

The Witness: Mears Carver.

By Mr. Stoddart: Q. Anyone else?

A. "Dutch" Carver, and Albert Evelend.

Q. Were those common laborers who were working at the same plant that you worked at?

A. Yes, sir.

Q. Do you know whether or not they belonged to Local No. 397?

A. I did not.

Q. Were they permit workers, so, if you know?

A. Working dues, they paid working dues.

Q. Now when you got to the union hall, what did you do?

A. Well we stood around there.

Q. Did you enter the hall at any time?

A. No, sir.

Q. Did you attend at any meeting at the hall?

A. No, sir.

Q. Did you see Jack Green at the hall?

A. If I did, I don't remember it.

Q. Did you see him in the parking lot talking to 521 anyone?

A. Well, I was more or less in the background of the crowd, and I couldn't swear I seen him at that time.

Q. What did you do next as you stood around?

A. Talked—the usual conversation.

Q. Did anyone tell you why you were there?

A. No, sir.

Q. Did you go any place after you met there for a while?

A. I went across the street to the tavern to get a bottle of beer.

Q. Then did you go anywhere after that?

A. No, sir.

Q. Did you go to the canal project at all?

A. Yes, sir, I did.

Q. Whom did you go with?

A. The same bunch that I told you I was riding with.

Q. Did you talk to anybody about that trip?

A. I don't understand what you mean.

Q. Well, did you know where you were going when you left the hall?

A. I knew I was going out to the Chain of Rocks canal.

Q. Who told you that?

522 A. Well, that is all riding together, the word just got around.

Q. Did you know where you were going on the Chain of Rocks canal project?

A. No, sir, I didn't.

Q. Did you ever hear of Arthur Terry that morning?

A. Never heard of him.

Q. When you arrived at the Chain of Rocks canal project, were there other persons there?

A. Well, there was a large group there, yes.

Q. About how many people?

A. Oh, I couldn't estimate, about five hundred, I would say.

Q. What did you do when you arrived there?

A. Followed the crowd.

Q. Where did the crowd go?

A. On the levee.

Q. Then what did you do?

A. Just milled around with the crowd.

Q. Did you do anything else? Did you go any particular place?

A. No, sir, just on the levee.

Q. Do you recall going down to where the piece of machinery was?

523 A. Yes, sir. I walked down to the piece of machinery.

Q. What did you do with respect to that machinery?

A. Stood there and watched it.

Q. Well, what happened?

A. Nothing.

Q. Was anybody on it?

A. Not when I got there, there wasn't.

Q. Was the engine still running?

A. Yes, the engine was still running.

Q. Was the scoop still up in the air?

A. Well, that I couldn't tell you.

Q. What—was the operator on the tractor?

A. No, sir.

Q. But you weren't there when the operator was on the tractor?

A. No, sir, I never seen the operator on the tractor.

Q. How long did you stay out to the project?

A. I would estimate about half an hour.

Q. Did anybody tell you to go?

A. No, I just followed the crowd again.

Q. So far as you were concerned, you were following the crowd with respect to the entire incident, is that correct?

A. That is right, yes, sir.

524 Mr. Stoddart: That is all.

Mr. FitzGerald: No questions.

(Witness excused.)

The Court: Call the next witness.

525 ALFRED EVELEND, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Stoddart.

Q. Please state your name?

A. Alfred Evelend.

Q. Mr. Eevelend, please talk loudly enough so everyone can hear you.

Where do you live, Mr. Evelend?

A. Keysport, Illinois.

Q. Are you presently employed?

A. No, sir.

Q. Where were you last employed, Mr. Evelend?

A. I was employed at Greenville, Illinois.
Q. Are you a member of a trade union?
A. Yes, sir.
Q. What union do you belong to?
A. The A. F. of L. Hod Carriers.
Q. I don't believe the jury can hear you.
A. The A. F. of L. Hod Carriers.
Q. Which local?
526 A. I believe it was—I don't remember just exactly the name of the local.
Q. In what city?
A. In Greenville, Illinois.
Q. In Greenville, Illinois?
A. Yes, sir.
Q. In April of 1953, where were you employed?
A. I believe in Granite City Steel.
Q. At Granite City Steel?
A. Yes, sir.
Q. And at that time what local union were you a member of?
A. I was a member of Greenville Local.
Q. Were you working under the jurisdiction of Local No. 397 at Granite City?
A. Yes, sir.
Q. Do you know the defendant Jack Green?
A. I know him when I see him, yes, sir.
Q. Did you pay work permit dues at that time?
A. Yes, sir.
Q. To Local 397?
A. Yes, sir.
Q. What was the nature of your employment at Granite City Steel?
527 A. Laborer.
Q. Did you have any supervisor who might be known as a foreman?

A. Dutch Graft was my foreman. Elmer Graft.

Q. Specially directing your attention to Monday morning April 13, 1953, did anything unusual occur about 9:30 in the morning?

A. Was that the time that we went to the canal? Yes, sir, I was out there.

Q. Were you working at that time in relation to your duties at the Granite City Steel?

A. Yes, sir.

Q. Did somebody have a conversation with you with respect to anything at that time?

A. No, sir.

Q. What did you do?

A. When they told me to go out there?

Q. Well, who told you to go out there?

A. I don't remember who told me there.

Q. Well, what was said to you at the mill?

A. Somebody came by and said, "Go to the hall."

Q. Go to the hall?

A. "Go to the hall," yes, sir.

Q. Did you go to the hall?

528 A. Yes, sir.

Q. Do you know who told you that?

A. No.

Q. Whom did you go with?

A. I don't remember that. I don't remember.

Q. Did you punch the time clock when you left the Granite City Steel?

A. Dropped in our brass, that is all we had, was the brass.

Q. Do you recall about what time that was that you left?

A. I don't remember what time, sir.

Q. Well, where did you go then, in the hall?

A. Yes, sir.

Q. What did you do when you arrived at the hall?

A. I stood in the parking lot.

Q. Was there anybody else at the hall?

A. There was some men there, yes, sir.

Q. Approximately how many?

A. I don't know.

Q. Well, could you give the jury any help with respect to the number?

A. I wouldn't know exactly how many men, I wouldn't know.

529 Q. Would you say there was a crowd of men?

A. Yes, sir.

Q. Did you see your foreman there?

A. No, sir.

Q. Did you see Jack Green?

A. I seen Jack Green, yes, sir.

Q. Approximately how long did you stay at the hall?

A. I don't know that.

Q. Did you have any meeting at the hall?

A. No, sir.

Q. Did you ever enter, did you ever go inside of the hall?

A. No, sir.

Q. Did you hear Jack Green say anything when you were at the hall?

A. Yes, sir.

Q. What did he say?

A. I can't remember the exact words.

Q. Well, in substance, to the best of your recollection.

A. The best I remember Jack Green said, "Go out there and walk around, and I don't want no trouble."

Q. Did he say where to go?

A. "Go out to the canal."

530 Q. Can you state anything more with respect to what he said, what he meant by going out and walking around?

Mr. FitzGerald: If the Court please, I object to that question.

The Court: State the entire conversation if there was anything further. If there was anything further, why, state it, that you heard Mr. Green say.

By Mr. Stoddart: Q. Did he say what to walk around?

A. No, sir, I never understood him to say what to walk around.

Q. Did you understand what he meant when he said that?

A. I understood he meant to go to the canal, yes, sir.

Q. Did you understand where to go?

A. No, sir.

Q. Did you understand what you were to do when you got there?

A. No, sir.

Q. Well, then did you go to the canal?

A. Yes, sir.

Q. How did you go?

A. I rode out there in a car.

Q. When you arrived at the canal, what did you do?

531 A. Well, I stood around there a while and got back in the car and went back to work.

Q. Approximately how many people did you see at the canal, if you know?

A. I don't remember any faces there. I know there was a lot of people there.

Q. Did you see Jack Green at the canal?

A. No, sir.

Q. How long did you stay?

A. I don't remember how long.

Q. Did anybody tell you to leave?

A. No, sir, I don't believe there was.

Q. Did you ever hear of Mr. Terry?

A. No, sir.

Mr. Stoddart: That is all. Your witness.
Mr. FitzGerald: No questions.
The Court: Call the next.
(Witness excused.)

532 FRANK C. BROCK, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Stoddart.

Q. Please state your full name.
A. Frank C. Brock.
Q. What is your occupation, Mr. Brock?
A. At present, farmer.
Q. Where do you live?
A. Festus, Missouri.
Q. What was your occupation or profession in April of 1953?
A. Superintendent for the Masserman Construction Company.
Q. What type of work were you engaged in?
A. Rip-rap.
Q. Where?
A. Chain of Rocks canal, Granite City.
Q. Directing your attention to Monday, April 13, 1953, did you go to the union hall, Local 397, at Granite City?
533 A. I did.
Q. What was the purpose?
A. To obtain men for my job.
Q. What did you see when you arrived there?
A. A group of men.
Q. Approximately how many?
A. I would say three or four hundred.
Q. Did you have a conversation with Jack Green?
A. I did.

Q. Who was present?

A. A lot of men. I didn't know any of them.

Q. What did you say to Green and what did he say to you?

A. I asked Mr. Green for three men to be sent out that day at noon or the following morning; and he said, all right, he would send the men on the job; and I turned to Mr. Green, I said, "What are you doing today, having a picnic?"

He said, "I don't know."

And I left the hall.

Mr. Stoddart: That is all. Your witness.

Mr. FitzGerald: No questions.

The Court: Call the next.

Mr. FitzGerald: Just a moment.

534 *Cross-Examination by Mr. FitzGerald.*

Q. Did you get those men?

A. Yes, sir.

Mr. FitzGerald: That is all.

(Witness excused.)

535 MERRILL LINDSEY, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Stoddart.

Q. Will you state your name, please?

A. Merrill Lindsey.

Q. Mr. Lindsey, where do you live?

A. Granite City.

Q. Illinois?

A. Illinois.

Mr. Stoddart: Talk a little louder, please, so that we can hear you back here.

The Witness: Yes.

By Mr. Stoddart: Q. What is your employment at the present time?

A. Janitor.

Q. Where is that?

A. At Central School, Granite City, Illinois.

Q. Are you a member of any trade union at the present time?

A. Yes, sir.

536 Q. Of what union?

A. Building trades, building service trades.

Q. Would that be Local 397?

A. No, sir.

Q. Do you know the local number that you are a member of at the present time?

A. 392, I believe is what it is.

Q. Directing your attention to April of 1953, where were you employed?

A. At Dow Chemical Company.

Q. At that time were you a union member?

A. Yes, sir.

Q. What trade union did you belong to at that time?

A. Laborers.

Q. That would be Local 397?

A. That is right.

Q. Were you a member of Local 397?

A. I was.

Q. What was the nature of your employment with Dow Chemical?

A. Laborer.

Q. Who was your foreman?

A. Clarence Baumeyer.

Q. How do you spell that?

537 A. I don't know exactly how that is spelled, I think B-a-u-m-e-y-e-r.

Q. Directing your attention now to Monday morning, on or about April 13, 1953, did anything unusual occur when you were employed at the Dow Chemical Company that morning?

A. We were called off the job.

Q. Do you recall who called you off the job?

A. Do I recall?

Q. Yes.

A. I was sent out by the steward.

Q. Who was the steward at that time?

A. Dale Skeen.

Q. Dale Skeen?

A. Yes, sir.

Q. Is he a number of Local 397?

A. Yes, sir.

Q. What in substance did Mr. Skeen say to you, and what did you say to him?

A. Nothing to me direct.

Q. What did he say?

A. He just said—

Q. Well, go ahead.

A. He just said to us, "Go to the hall."

538 Q. Were there other laborers around when he made this remark?

A. Yes, sir.

Q. Did he say for what purpose you were to go to the hall?

A. No, sir.

Q. Did you know why you were going to the hall?

A. No, sir.

Q. Well, did you go to the hall?

A. Yes, sir.

Q. Did you punch the time clock when you left?

A. Yes, sir.

Q. Did all the members of your group go?

A. Yes, sir.

Q. When you arrived at the hall, what did you do?

A. I got to the hall late on account of being held up by the train. I was riding with another fellow. I just stood around there outside of the hall.

Q. Did you ever enter the hall?

A. No, sir.

Q. Did you ever attend any meeting that morning?

A. No, sir.

Q. Did you have any conversation when you got to the hall with anyone as to the purpose of this meeting?

539 A. No, I didn't know what it was all about.

Q. Well, did you hear anything about what it was about?

A. No, sir.

Q. How many persons were at the scene, or at the hall that morning?

A. There were several, but I wouldn't know.

Q. Several people?

A. Several men, yes.

Q. Well, by "several" do you mean two or three?

A. Well, they could have been maybe a hundred or more people.

Q. I see. Did you see Jack Green there?

A. At one time.

Q. What was Jack Green doing when you saw him?

A. Walking in front of the hall, going around the hall, I would say.

Q. Was there anybody with Jack Green?

A. No.

Q. Did you see Paradadi?

A. Yes, sir.

Q. Did you see Durham?

A. Yes, sir.

Q. Were they in the neighborhood of Green?

540 A. I saw them around the parking lot right after Mr. Green went around to the parking lot, yes.

Q. Well now, did Green say anything that morning at that time?

A. I didn't hear him say a word.

Q. Well, did anyone say anything down at the hall—anybody—Dale Skeen or Green say anything?

A. The only thing Dale Skeen said was just us to go—"Let's go", when he started to leave.

Q. Started to leave, you say?

A. Started to leave the hall.

Q. What did he say, Mr. Lindsey?

A. "Let's go, follow the cars."

Q. Did you know where you were going?

A. No, sir.

Q. Did you ever hear of Arthur Terry that morning?

A. No, sir.

Q. Where did you go?

A. I went out on the canal.

Q. That is the Chain of Rocks canal?

A. Chain of Rocks canal, that is right.

Q. Were you driving your car?

A. No, sir, I was riding with another fellow.

Q. You were following the cars, is that correct?

541 A. We just followed the cars.

Q. What did you do when you got out to the canal project?

A. Well, he parked the car. We got out and walked on up the levee.

Q. Were there other people there?

A. There were several there.

Q. By "several" you mean—

A. Several hundred, I would say.

Q. What were the people doing?

A. Just standing around.

Q. What did you do?

A. I stood around with them.

Q. Did you see a piece of equipment there?

A. I saw two pieces of equipment, I believe.

Q. What were the men doing with respect to the equipment, if anything?

A. There was nobody on the equipment.

Q. Was there anybody around the equipment?

A. All these men standing close to it, but they just stand around.

Q. But there was no operator on the piece of equipment?

A. No, there was no operator on it.

Q. Did you see Jack Green out there?

542 A. Later on.

Q. Did he say anything?

A. At one time, that was when we got ready to leave, all the words I heard him say was "Clear the way, boys, and let them out of here."

Q. Did you see Dale Skeen out there?

A. Not that I recall.

Q. Did you hear any member of the crowd say anything as to what should be done with that car?

A. Not that I remember, no.

Q. How long would you say you were out there, Mr. Lindsey?

A. Well, maybe a quarter of an hour.

Mr. Stoddart: That is all. Your witness, counsel.

Mr. FitzGerald: No questions.

(Witness excused.)

The Court: Call the next

543 CLARENCE MOORE, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Stoddart.

Q. What is your name, sir?
A. Clarence Moore.
Q. Where do you live?
A. Edwardsville, Illinois.
Q. Are you a member of a trade union?
A. Yes, sir.
Q. What union do you belong to?
A. Edwardsville Local 179.
Q. Is that a trade union of the common laborers and hod carriers?
A. Yes, sir.
Q. Are you presently employed?
A. Yes, sir.
Q. Where is that?
A. I am working now in Maniokee.
Q. Mr. Moore, where were you employed in April of 1953?

544 A. On what date?
Q. In April of 1953.
A. In April—on what date?
Q. Well, let's say April 13th
A. I was at—with Dow Chemical Company.
Q. At that time were you a member of a trade union?
A. Yes, sir.
Q. What trade union did you belong to at that time?
A. Edwardsville 179.
Q. Were you working under the jurisdiction of Local 397, Granite City?
A. Granite City, yes, sir.

Q. Were you paying permit dues to work in that area?

A. I was paying monthly dues.

Q. To Local 397, isn't that correct?

A. Yes, sir.

Q. What was the nature of your employment with Dow Chemical?

A. Well, water boy at that time.

Q. Did you have a foreman?

A. Yes, sir.

Q. What was his name?

A. Herman Peters.

Q. Now did anything unusual happen that morning?

545 A. What do you mean, "unusual"?

Q. Well, did you have any conversation with anyone with respect to a meeting at the union hall?

A. No, sir.

Q. Did you attend any meeting at the union hall?

A. At the union hall?

Q. Yes.

A. No, I didn't go to the union hall.

Q. Did you leave your work—your place of employment that morning?

A. Yes, sir.

Q. Why did you leave?

A. Well, they just come along and told us to go to the hall.

Q. Who came along and told you to go to the hall?

A. What?

Q. Who came along?

A. Them—my foreman.

Q. What was his name?

A. Herman Peters.

Q. Did he say why you were to go to the hall?

A. No, sir.

Q. Did he tell anybody else that same thing?

A. I couldn't say that, I was a water boy, like I
546 said.

Q. Did anybody leave with you?

A. Well, yes. There was two men went down with me—rode down, yes, sir.

Q. Who were they?

A. Pete Perry and a fellow by the name of "Pussycat," his name is Thompson, I believe his last name.

Mr. FitzGerald: What did you say his first name was?

Mr. Stoddart: "Pussycat" Thompson.

The Witness: That is his nickname. I never knew his full name.

By Mr. Stoddart: Q. Whose car did you go in?

A. My own car.

Q. When you arrived at the union hall; did you attend a meeting?

A. No, sir.

Q. Did you ever go inside the union hall?

A. No, sir.

Q. What did you do?

A. I stopped my car along this side. Train was acoming, and we waited for the train to go by, and then we parked, got to the railroad track, set in the car, that is as far as we got.

547 Q. Were there any other persons at the union hall that morning?

A. Yes, sir.

Q. Approximately how many?

A. Oh, I don't know. I couldn't give you—I don't know.

Q. Could you give a guess, to help the jury a little bit?

A. Oh, I would say a hundred or so, maybe.

Q. Would it be as many as five or six hundred?

A. Well, now I wouldn't say—I couldn't say that for sure either.

Q. Did you see Jack Green?

A. No, sir.

Q. What did you do next?

A. Well, somebody came out and said, "Follow the cars," so we followed the cars.

Q. Did the cars go one after another, is that right?

A. Yes, sir.

Q. And you followed some car?

A. Yes, sir.

Q. Did you know where you were going?

A. No, sir.

Q. Did you know what the matter was about?

548 A. No, sir, not until I got out there.

Q. Had you ever heard of Arthur Terry?

A. Sir?

Q. Had you ever heard of Arthur Terry prior to going out there that morning?

A. No, sir.

Q. When you arrived in the Chain of Rocks canal project, what did you do?

A. Got out of the car, walked up on top of the canal.

Q. Who told you to do these things?

A. Well, we just followed the crowd, that is all. That is where the car stopped, that is as far as we could go.

Q. How many men did you see out there?

A. Well, it was quite a few, but I just didn't know how many.

Q. Did you see Jack Green out there?

A. No, sir.

Q. What did you do when you got out of the car and followed these men?

A. I walked on top of the canal, and I guess I must have walked—oh, a quarter of a mile, I would say—well, I will say a quarter of a mile, maybe less than that, and

549 they said, "Go back to your job."

Q. Who told you to go back to your job?

A. The fellows, all of them was going back, they said, "Go back to your job."

Q. Did you see your foreman out there?

A. No, sir.

Q. Did you check back in at the Dow Chemical?

A. Yes, sir.

Q. How long would you say you were gone all of the time?

A. I can't remember that. It might have been an hour, a little over an hour, I wouldn't say for sure because I don't remember.

Mr. Stoddart: Your witness.

Mr. FitzGerald: No questions.

The Court: Call the next.

(Witness excused.)

550 FRANCIS LOWRY, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Stoddart.

Q. What is your name, please?

A. Francis Lowry.

Q. Where do you live?

A. Edwardsville.

Q. Are you a member of a trade union?

A. Of who?

Q. Of a trade union?

A. Yes.

Q. You will have to talk a little louder so we all can hear you, Mr. Lowry.

What union do you belong to?

A. 179.

Q. That is common laborers?

A. Yes, sir.
Q. That is in Edwardsville?
A. Edwardsville, yes.
Q. Where are you presently employed?
551 A. Sir?
Q. Where are you presently employed?
A. Granite City Steel.
Q. That is in Granite City, Illinois?
A. Yes, sir.
Q. Are you now working under the jurisdiction of Local 397?
A. Yes, sir.
Q. In April of 1953, where were you employed?
A. Granite City Steel.
Q. At that time were you working under the jurisdiction of Local 397 in Granite City?
A. Yes.
Q. Were you a member of that union, of 397?
A. No, sir.
Q. On the morning of April 13, 1953, I believe it was a Monday morning, were you working at Granite City Steel?
A. Yes, sir.
Q. Did anything unusual happen that morning?
A. No, sir.
Q. Did you go to a meeting at the union hall?
A. Yes, sir.
Q. Who directed you to go to that union meeting?
552 A. Well, I couldn't tell you. We was working there and somebody said, "Come one, let's go," and I followed the guy that told me. I don't know who it was.
Q. Did you punch the time clock?
A. No, sir.
Q. Did you sign out in any way?
A. No, sir.
Q. Who went with you, Mr. Lowry?

A. Marion Weeps, I rode with.

Q. Did you know why you were to go to the union hall?

A. No, not exactly, no.

Q. When you got to the union hall, did you attend any meeting?

A. No, sir.

Q. What did you do next after you got to the union hall?

A. Well, we never got right up to the hall. They was coming out, you see, and they said they was going to work the Chain of Rocks, they was going to the Chain of Rocks, that is far as as I got.

Q. Did anybody say to you anything about Arthur Terry that morning?

A. No, sir.

553 Q. Did you see Jack Green at the union hall?

A. No, sir.

Q. Who was your foreman? Who was your foreman at that time?

A. Bert Thompson.

Q. Did he have any conversation with you that morning with respect to that meeting?

A. No, sir.

Q. Did you see him down at the union hall?

A. No, sir, I didn't.

Q. Did you go to the Chain of Rocks canal project?

A. We did.

Q. How did you go there?

A. Well, rode out with Marion Weeps in the car.

Q. That was in a car?

A. Yes, sir.

Q. What did you do when you arrived there?

A. Well, we started walking around there, and the bunch started back, so we followed the bunch back. That is as far as I got. We didn't even go up there.

Q. You don't know why you got out there?

A. I know how I got out there.

Q. You don't know why you went out there?

A. No, sir, I do not.

554 Mr. Stoddart: That is all.

Mr. FitzGerald: I don't want to ask him anything.

The Court: Call the next.

(Witness excused.)

555 LESTER EARL HYDRON, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Stoddart.

Q. What is your name, please?

A. Lester Earl Hydron.

Q. Where do you live, Mr. Hydron?

A. Edwardsville.

Q. Are you a member of a trade union?

A. Of 179 at Edwardsville, yes.

Q. Mr. Hydron, in April of 1953, where were you employed?

A. Dow Chemical.

Q. Where is that located?

A. In Madison.

Q. Who was your foreman at that time?

A. George Hayes.

Q. At that time were you working under the jurisdiction of Local 397 of Granite City?

A. Yes.

Q. Do you know Jack Green?

556 A. Yes, sir.

Q. On the morning of April 13th, which I believe was a Monday, did you have any conversation with Bill Hayes with respect to a meeting at the union hall?

A. No, sir.

Q. Whom did you have a conversation with with respect to any meeting?

Mr. FitzGerald: Object to that. He has not said he had any.

The Court: Well, see if he had. Did you have any?

Mr. Stoddart: I will withdraw that.

The Court: O. K.

By Mr. Stoddart: Q. On that morning did anything unusual happen, Mr. Hydron?

A. No, sir.

Q. Did you go to a union meeting?

A. No.

Q. Did you leave the Dow Chemical that morning?

A. I did.

Q. Where did you go?

A. I went with the rest of the fellows up to the hall.

Q. What do you mean, "the rest of the fellows"?

A. The rest of the fellow workmen that was work-
557 ing there.

Q. The laborers?

A. Yes, sir.

Q. Who told you to go?

A. Well, nobody. I don't know as anybody told me to go.

Q. Did you punch a time clock when you left?

A. Yes, sir.

Q. Did you know where you were going?

A. I did not.

Q. Did you know why you were going?

A. I did not.

Q. You just left with the rest of the laborers?

A. Yes, sir, that is right.

Q. When you got to the union hall, did you enter the union hall?

A. No, sir.

Q. Did you attend any meeting there?

A. No, sir.

Q. What did you do?

A. When I got up there, the cars that were there were starting to leave, and I followed them.

Q. You followed the cars?

A. That is right.

558 Q. Did anybody tell you to follow the cars?

A. No, sir.

Q. Had you ever heard of Arthur Terry that morning?

A. No, sir.

Q. Where did the cars take you?

A. Out to the river on the levee.

Q. Did you know when you were driving and following these cars, did you know where you were going?

A. No.

Q. When you arrived at the river, what did you do?

A. Well, I stood around the car there for a while, and they all left, and I left with them again. I went back to work.

Q. Did you see your foreman at the union hall that morning?

A. No, I did not.

Q. Did you see Jack Green there?

A. No, I didn't.

Q. Did you see your foreman at the project—canal project?

A. No, I don't remember.

Q. Did you see Jack Green out there?

A. No, I did not.

Q. Did you go back to work at Dow Chemical?

559 A. I went back to work.

Q. How long would you say you were gone?

A. I don't remember the exact time, probably an hour.

Q. How many people would you say were at the canal project?

A. I would say maybe a hundred, a hundred and fifty. I don't know. I don't remember.

Q. How long were you at the canal project?

A. What was that?

Q. How long were you there?

A. Where was that?

Q. At the canal project.

A. I would say maybe thirty or forty minutes.

Mr. Stoddart: That is all. Your witness, counsel.

Mr. FitzGerald: No questions.

The Court: That is all. Call the next.

(Witness excused.)

560 MURRELL JONES, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Stoddart.

Q. State your name, please.

A. Murrell Jones.

Q. Mr. Jones, where do you live?

A. Edwardsville.

Q. Where were you employed in April of 1953?

A. Dow Chemical, I think, in Madison.

Q. Madison, Illinois, is that right?

A. I believe so.

Q. At that time were you a member of a trade union?

A. Yes, A. F. of L. trade union, yes.

Q. What local did you belong to?

A. 179.

Q. At Edwardsville, is that correct?

A. At Edwardsville.

Q. When you were working in Madison, were you under the jurisdiction of Local 397?

A. That is who we were working for, yes.

561 Q. At Granite City?

A. At Granite City, yes.

Q. Do you know the defendant Jack Green?

A. Yes, I know Mr. Green.

Q. Who was your foreman at the Dow Chemical?

A. I don't remember.

Q. Now the morning of April 13, 1953, I believe it was Monday morning, do you recall anything unusual happening that morning?

A. Well, I don't know exactly—the exact date that it was.

Q. Well, the date that you went to the canal with the cars, that was the date we are speaking of.

A. Yes.

Q. On that morning did you leave the Dow Chemical Company?

A. Yes, sir.

Q. Did you have any talk with anybody—anyone there before you left?

A. No, sir, they just said, "We are going to get in the car and go some place."

Q. Did anybody tell you to go?

A. Not that I know of, no.

Q. Whom did you talk to about it?

562 A. Well, they come up and got me in the truck took me inside, said that we had to go, so we got in the car, and I asked the guy up there where we was going. He said, "Just follow the car."

Q. Was that before you went to the union hall?

Mr. FitzGerald: He hasn't said anything about the union hall, John. Why don't you let him tell what happened?

Mr. Stoddart: That is what I am trying to do. It is not a secret. I don't think it is a secret.

Mr. FitzGerald: Stop testifying about it.

The Court: Go ahead.

By Mr. Stoddart: Q. Who was it that time who came to you and said, "Get in the truck, we are going"?

A. I don't remember who that was.

Q. Do you remember any of those persons that came up there?

A. No, I don't.

Q. But you went with them?

A. Yes, sir.

Q. Where did you go?

563 A. We went to the hall.

Q. Did you know why you were going to the hall?

A. No, sir, I didn't.

Q. Did anybody tell you why you were going to the hall?

A. No, nobody told me.

Q. When you got to the hall, what did you see?

A. Oh, I saw several cars there

Q. By several cars, what do you mean, two or three?

A. Yes.

Q. Well now, Mr. Jones, would you say that that is your answer, there were two or three cars there?

Mr. FitzGerald: Wait a minute, won't you, please ask him a private question—

Mr. Oxtoby: Let us ask him.

Mr. Stoddart: If you want to make an objection, make it, please.

The Court: Make your objection, and I will take care of it.

Mr. FitzGerald: I think that is right. I do object to counsel leading the witness and suggesting to him.

The Court: Read the last question back.

(Question read.)

564 The Court: I think you ought to ask him how many cars were there.

The Witness: Well, I couldn't say.

By Mr. Stoddart: Q. How many people would you estimate were there, Mr. Jones?

A. Sir?

Q. How many people would you estimate that there were there at the union hall?

A. There was quite a few, I don't know how many, though.

Q. Did you see your foreman there?

A. No, sir.

Q. Did you see Jack Green there?

A. No, sir.

Q. Did you attend any meeting there?

A. No, sir. At the hall?

Q. Yes.

A. No, sir.

Q. Approximately how long were you at the hall?

A. Well, just a few minutes that is all.

Q. Then what did you do?

A. Somebody said, "Go out to the canal."

Q. Do you remember who said that?

A. No, I don't.

565 Q. Then what did you do after somebody said that?

A. We just got in the car, and he said, "Get in the car." We just followed the other car.

Q. Did you follow the car, is that correct?

A. Yes.

Q. Did you know where you were going?

A. No. We went—we didn't know where we were going.

Q. Did you know why you were going?

A. No, we didn't know why.

Q. When you arrived at the canal, what did you do?

A. Well, we just got out of the car.

Q. Where did you go?

A. I didn't go very far.

Q. Well, did you go where everybody else was?

A. Well, yes.

Q. How many people would you say were out there?

A. Oh, I guess there were a couple of hundred there, I guess.

Q. Did you do anything out there?

A Not a thing.

Q. Then what did you do?

A. Oh, we were there about ten or fifteen minutes, and we went back to the job.

Q. Did you see a piece of equipment there?

566 A. No, I don't remember seeing no equipment.

Q. Did you see Jack Green there?

A. No, sir.

Q. You went back to work then, is that correct?

A. Yes, sir.

Mr. Stoddart: Your witness.

Cross-Examination by Mr. FitzGerald.

Q. Did you ever hear of a man by the name of Terry before you went out to this canal?

A. Sir?

Q. Did you ever hear of a man named Terry before you went out to the canal?

A. No, I never did.

Mr. FitzGerald: That is all.

Mr. Stoddart: That is all.

The Court: Call the next.

(Witness excused.)

567 ROBERT LAYTON BOYD, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Stoddart.

Q. What is your name, sir?

A. Robert Layton Boyd.

Q. Mr. Boyd, where do you live?

A. Edwardsville.

Q. In April of 1953, where were you employed, Mr. Boyd?

A. Well, at Dow Chemical, I believe.

Q. Is that at Madison, Illinois?

A. Yes, sir.

Q. At that time, did you belong to any trade union?

A. The laborers of Edwardsville.

Q. While you were working at the Dow Chemical Company, were you working under the jurisdiction of Local 397?

A. Yes, sir.

Q. Mr. Boyd, who was your foreman, if you remember, at Dow Chemical?

568 A. Essenprice—I couldn't tell you his first name. We called him "Smoky" Essenprice.

Q. On the morning of April 13, which I believe was a Monday morning, did anything unusual happen?

A. Well, we was sent out to the levee.

Q. Mr. Boyd, did you have any conversation with anyone with respect to this at Dow Chemical Company?

A. No, sir, only that word came around we was going up to the hall, that is all I know.

Q. Word came around, you say?

A. Yes, sir.

Q. Do you recall how you heard that?

A. No, I don't.

Q. Do you recall who told you that?

A. No, sir.

Q. Do you recall whether or not you were advised as to why you were to go to the union hall?

A. No, sir.

Q. Well, did you go to the union hall?

A. Yes, sir.

Q. When you arrived at the union hall, what did you do?

A. Well, we went back in back of the hall out in the yard, until word come we was going out to the 569 levee.

Q. Now how did that word come to you?

A. Well, just through different parties, I don't recall who.

Q. Can you remember who told you?

A. No, I cannot.

Q. Did you see Jack Green at the union hall?

A. I seen him out in the yard, I didn't see him in the hall.

Q. Did you hear him say anything?

A. No, sir.

Q. Did you attend any meeting at the hall that morning?

A. No, sir.

Q. When you went to the levee, how did you go to the levee?

A. By car.

Q. Did you know where you were going, what particular spot on the levee?

A. No, sir.

Q. Did you know for what purpose you were going to the levee?

A. No, sir.

Q. When you arrived at the levee, what did you do?

570 A. Well, we got out of the car and walked down the road, and then walked up to the levee.

Q. How many persons were there?

A. Well, I couldn't say. There was about, quite a bunch. I would say two or three hundred.

Q. Did you see Jack Green at the levee?

A. I don't recall seeing Jack Green at the levee.

Q. Did you see your foreman at the levee?

A. No, sir.

Q. How long were you at the levee?

A. Well, not over thirty minutes, I don't believe.

Q. Have you ever heard of Arthur Terry that morning—before that morning?

A. No, sir.

Q. Did you hear of him at the union hall that morning?

A. No, sir.

Mr. Stoddart: That is all. Your witness.

Mr. FitzGerald: No questions.

The Court: Call the next.

(Witness excused.)

571 RALPH L. PARMLEY, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Stoddart.

Q. What is your name, sir?

A. Ralph L. Parmley.

Q. Where do you live?

A. Granite City, Illinois, 2401 East 25th Street.

Q. Directing your attention to March, 1953, were you a member of a trade union at that time?

A. A member?

Q. Yes.

A. No, not a member.

Q. Were you affiliated with any union?

A. Yes, sir.

Q. In what respect?

A. I just worked out of there.

Q. What union did you belong to?

A. I do not belong to a union, sir.

Q. By working there, do you mean you had a working permit to work out of the local union?

A. No, sir.

572 Q. Would you explain it to me? I don't understand what you mean.

A. The reason I was working out of there, I was working there before I went in the Service, paid some bills there off.

After I got out, I worked in the plant, my father got hurt—

Q. He is a member of the local 397?

A. That is right. He got crippled. I went to Mr. Green and asked him if I couldn't get back to work to help compensate for the bills, that the mills were going down at that time. I went back to work there—oh, shortly before—it wasn't too long after that I got to go out.

Q. Did you join Local 397 at any time?

A. No, sir, I haven't joined, no.

Q. In April of 1953, where were you employed?

A. April?

Q. Yes.

A. I was from Aspen Construction, I believe.

Q. Now in April 13, 1953, did anything unusual happen that morning?

A. Well, I don't remember the correct date.

Q. Well, were you called to the union hall?

573 A. No, sir.

Q. Did you go to the union hall?

A. No, sir.

Mr. Stoddart: That is all.

Mr. FitzGerald: No questions.

The Court: You may be excused.

Call the next.

(Witness excused.)

574 CLARENCE FREESE, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Stoddart.

Q. What is your name?

A. Clarence Freese.

Q. Mr. Freese, talk loud enough so we can all hear you, if you will, please. It is kind of difficult to understand one in this court room.

Mr. Freese, where do you live?

A. Well, Route 4, in Edwardsville, is where I live. I am not right there at the time, and haven't been for a couple of weeks.

Mr. FitzGerald: I can't hear you. I am sure you can speak a little louder.

The Witness: Route 4, at Edwardsville. At the present time I am not there. I have been at Rocheport, Missouri.

Mr. FitzGerald: But Edwardsville is your home?

The Witness: Edwardsville is my home, Route 4 in 575 Edwardsville.

Mr. FitzGerald: Yes. Thank you.

By Mr. Stoddart: Q. Directing your attention to April of 1953, where were you employed, Mr. Freese?

A. Well, at Dow Chemical, I believe, at the Austin job.

Q. That is located at Madison, Illinois?

A. Yes, sir.

Q. At that time did you belong or were you affiliated with any trade union?

A. 397 in Granite City, laborers.

Q. Were you a member of that union?

A. Yes, sir.

Q. Mr. Freese, on the morning of April 13th did anything unusual occur?

A. Well, nothing—I don't think any more than just to send out on a job.

Q. Now who is your foreman?

A. Russell Gaddy.

Q. Was Dale Skeen the steward on your job?

A. Yes.

Q. Did he have a conversation with you or a group of men the morning of April 13th?

A. Not me personally.

576 Q. Was there a group of men there?

A. Yes, sir.

Q. Were you in the group?

A. Yes, sir.

Q. What did he say, as best you can recollect?

A. Well, the best I can recollect, we was supposed to report at the hall.

Q. He told you to report there? He told the group of men to report to the hall, is that correct?

A. Yes, sir.

Q. What did you do?

A. Well, we reported at the hall.

Q. Did he say why you were to report at the hall?

A. No, sir.

Q. When you reported to the union hall, whom did you report to?

A. I just went up there with the crowd, I never reported to no one, no individual.

Q. Did you go inside the union hall?

A. No.

Q. Did Dale Skeen tell you what to do?

A. No, he didn't tell me personally what to do.

Q. How many men would you say were at the union hall?

A. Oh, I would say approximately two or three
577 hundred, maybe more than that, or less.

Q. Now, did you see Jack Green at the Union hall?

A. Well, yes, sir.

Q. Did you see Dale Skeen at the union hall?

A. I can't recall whether I seen him there or not.

Q. Did you hear any conversation that Jack Green said at the union hall?

A. No, sir.

Q. Did Skeen say anything to you at the union hall?

A. No, sir.

Q. Well, what happened next, if you remember?

A. Well, the next report that I heard, some of the fellows talking that we were supposed to go out on the canal.

Q. Did they say why you were supposed to go to the canal?

A. No.

Q. Had you ever heard of Arthur Terry that morning?

A. No, sir.

Q. What did you do then after you heard this conversation with respect to going to the canal?

A. Well, they all started going out there, and I went along.

Q. Who went with you?

578 A. I was riding with another fellow in his car.

Q. When you arrived at the canal, what did you do?

A. Well, this group of men there—I just got out of the car and stood there with them.

Q. Then what did you do, if anything?

A. Nothing at all.

Q. Did you see a piece of machinery there, Mr. Freese?

A. Yes, sir.

Q. Did you do anything in connection with that machinery?

A. No, sir. There was some men gathered around the piece of machinery, but there wasn't nothing done, anything that I seen there.

Q. Did you stand around the machinery?

A. I was down there, yes.

Q. Did you see whether or not they had an operator on the tractor at that time?

A. Well, the operator was off on the ground, I believe, when I walked down there, as well as I remember.

Q. Was the tractor still running?

A. It was running, it was setting, you know, setting idle.

Q. But the motor was running?

A. The motor was running.

579 Q. Did you see Jack Green—

Mr. FitzGerald: He said he didn't—oh, excuse me.

By Mr. Stoddart: Q. —at the canal?

A. Yes, sir.

Q. What did you say, Mr. FitzGerald?

Mr. FitzGerald: Beg your pardon.

By Mr. Stoddart:

Q. How long were you at the canal?

A. Oh, I would say twenty minutes; twenty or thirty minutes, as best as I can remember.

Q. Did you leave that canal?

A. Yes, sir.

Q. Where did you go?

A. Back to the job.
Q. Did anybody instruct you as to that?
A. No, sir.
Mr. Stoddart: That is all. Your witness.
Mr. FitzGerald: No questions.
The Court: Call the next.
You are excused.
(Witness excused.)

580 NOBLE VIRGIL SMITH, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Stoddart.

Q. What is your name, please?
A. Noble Virgil Smith.
Q. Where do you live, Mr. Smith?
A. Alton, Illinois.
Q. In April, 1953, where were you employed?
A. Dow Chemical Company.
Q. At Madison, Illinois?
A. Yes, sir.
Q. At that time you belonged to a trade union?
A. Laborers.
Q. Which local did you belong to?
A. 218.
Q. In Alton?
A. Yes.
Q. Were you working under the jurisdiction of Local 397 when you were working with the Dow Chemical Company?
A. Yes, sir.
581 Q. Do you know the defendant Jack Green?
A. Yes, sir.

Q. Who was your foreman when you were working at the Dow Chemical Company?

A. I really don't know at the time, I have forgotten.

Q. Do you remember who your steward was?

A. Yes, sir.

Q. Who was that?

A. Dale Skeen.

Mr. FitzGerald: I can't hear you, Mr. Smith.

The Witness: Dale Skeen.

By Mr. Stoddart: Q. Now directing your attention to Monday, April 13, 1953, did you have any talk with Dale Skeen that morning with respect to a union meeting?

A. Not that I know of.

Q. Did you attend a union meeting that morning?

A. No, sir.

Q. Did you report to the union hall?

A. Yes, sir.

Q. How were you informed to go to the union hall that morning?

A. Well, that is too far back for me to remember. I just don't remember.

Q. Did you leave with anybody?

582 A. Yes, but I don't know who.

Q. Did you go to the union hall?

A. Yes, sir.

Q. Did you know why you were going to the union hall?

A. No, sir.

Q. Did you punch the time clock when you left?

A. Yes, sir.

Q. When you arrived at the union hall, how many persons did you see there?

A. I don't know.

Q. Did you attend any meeting at the union hall?

A. No, sir.

Q. What did you do after you stayed at the union hall?

A. I just stood around there.

Q. Did you go anywhere later?

A. No, sir.

Q. Did you go to the Chain of Rocks canal project?

A. Sir?

Q. Did you go to the Chain of Rocks canal project?

A. Yes, sir.

Q. Whom did you go with to the Chain of Rocks canal project?

A. Well, as far as I know, I went by myself.

Q. Now did you see Jack Green at the union hall?

583 A. No, sir.

Q. How did you know you were going to the Chain of Rocks canal project?

A. Well, I heard somebody say to go there, that is all.

Q. Did you follow some cars there?

A. I followed some cars.

Q. When you arrived at the Chain of Rocks canal project, what did you do?

A. I didn't do anything. We got out of the car and walked up on the levee.

Q. Did you see some people out there?

A. Yes, I seen a few.

Q. How many people?

A. I don't know.

Q. Well, would you say there was a good-sized crowd?

A. A good-sized crowd, yes.

Q. Did you see a piece of equipment?

A. I saw one bulldozer.

Q. Did you do anything with respect to this bulldozer?

A. No, sir.

Q. Did you look at the bulldozer?

A. I walked around it, yes.

Q. Was the engine running?

584 A. Yes, sir.

Q. Was the operator on the bulldozer?
A. No, sir.
Q. Did you see Jack Green?
A. No, sir.
Q. Now that morning at the union hall, or out at the Chain of Rocks canal project, can you remember any one person that you saw out there?
A. No, I don't.
Mr. Stoddart: Your witness, Mr. FitzGerald.
Mr. FitzGerald: No questions.
The Court: Call the next.
You are excused, sir.
(Witness excused.)

585 NIBERON ELLIS, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Stoddart.

Q. What is your name, sir?
A. Niberon Ellis.
Q. Mr. Ellis, you will have to talk a little louder so we can all hear you because it is hard to hear in this court room.
Where do you live, Mr. Ellis?
A. Glen—
Q. Illinois?
A. Yes.
Q. Are you presently employed?
A. Now?
Q. Yes.
A. Yes, sir.
Q. Where are you employed?
A. Scott Air Base at Belleville.
Q. In April of 1953, do you recall where you were em-

ployed at that time? Were you employed at Dow Chemical Company in 1953?

586 A. Yes, sir.

Q. Who was your steward at that time?

A. Dale Skeen.

Q. Do you recall who your foreman was?

A. Dale Skeen.

Q. Now were you associated or affiliated, or did you belong to any union when you were working at the Dow Chemical Company?

A. To which?

Q. To any union—trades union.

A. I belonged to the laborers.

Q. Which local did you belong to?

A. 474.

Q. Were you working under the jurisdiction of 397 when you were working at the Dow Chemical Company?

A. Yes, sir.

Q. Now on the morning of April 13, 1953, did you attend a meeting at the union hall?

A. No, sir.

Q. Did you go to the union hall?

A. Yes, sir.

Q. For what purpose did you go to the union hall?

A. That is—I don't know.

Q. Who told you to go to the union hall?

587 A. Dale Skeen.

Q. Did he say for what purpose you were to report to the union hall?

A. No, sir.

Q. Did you check out or punch the time clock when you left?

A. I don't recall.

Q. When you arrived at the union hall, did you attend any meeting?

A. No, sir.

Q. Did you enter the hall?

A. No, sir.

Q. Did you see Dale Skeen there?

A. No, sir.

Q. Did you see Jack Green?

A. No, sir.

Q. Well, what happened there?

A. They just all started going out the street and I followed.

Q. In a car?

A. Yes.

Q. Did anybody say where you were going?

A. No, sir.

Q. Did anybody state for what purpose you were going?

588 A. No, sir.

Q. Where did you go?

A. We went out to the levee.

Q. When you arrived at the levee, what did you do?

A. I got out of the car and walked about thirty foot, turned around and walked back.

Q. Did you go back to work then at the Dow Chemical Company?

A. After noon, yes, sir.

Q. How many people did you see out there on the levee?

A. Well, I can't recall.

Q. Was there a good-sized crowd, would you say?

A. A good-sized crowd.

Mr. Stoddart: Your witness, Mr. FitzGerald.

Mr. FitzGerald: No questions.

The Court: Call the next.

You are excused.

(Witness excused.)

589 JOHN LOCKLAR, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Stoddart.

Q. What is your name, sir?

A. Mr. John Locklar.

Q. Mr. Locklar, speak loudly enough so we can all hear you.

Where do you live?

A. Freeburg, Illinois.

Q. In April of 1953, where were you employed?

A. At Granite City Steel.

Q. Is that Granite City, Illinois?

A. Yes, sir.

Q. Were you associated or affiliated with any trade union at that time?

A. I am a member of Local 914, common laborers.

Q. At that time, April of 1953, were you working under the jurisdiction of Local 397, Granite City?

A. Yes, sir.

Q. Do you know Jack Green?

590 A. Yes, sir.

Q. Who was your steward on the job?

A. Steward is—we call him "Coon Dog", I don't know, I forget what his last name was.

Mr. FitzGerald: I can't hear you, Mr. Locklar. Will you talk a little louder, please?

The Court: He said "We called him 'Coon Dog'", and he couldn't remember his last name.

The Witness: I said that I couldn't remember his last name.

By Mr. Stoddart: Q. Now did "Coon Dog" say anything on the morning of April 13th with respect to a meeting at union hall?

A. No, sir.

Q. Did anyone?

A. Well, I was contacted to come to the labor hall.

Q. Do you remember who told you that?

A. Well, if I think—if I am not mistaken, I think it was my labor foreman.

Q. What was his name, if you remember?

A. Earl Petrie, I imagine.

Q. Did he state for what purpose you were to report to the union hall?

A. No, sir.

591 Q. When you arrived at the union hall, what did you do?

A. We were told to go on up, follow the crowd. Somebody said, "Follow the rest of the automobiles" that we were following.

Q. Do you recall who told you that?

A. No, sir.

Q. Did you see your foreman at the union hall?

A. No, sir.

Q. Did you see your steward at the union hall?

A. No, sir.

Q. Did you see Jack Green at the union hall?

A. No, no.

Q. Did you know where you were going?

A. They said—somebody said, "Follow the cars!" So we followed them.

Q. Did you know for what purpose you were following the cars?

A. No, sir.

Q. How many persons would you say were at the union hall that morning?

A. We didn't seem to stop at all, we went out on the road.

Q. Where did you go?

592 A. We went out to the Chain of Rocks bridge part.

Q. What did you do?

A. Well, we followed the group of men that were over on the levee. There was a bunch of us.

Q. Talk a little louder, please.

A. I say, I followed the group of men that was walking up towards the levee.

Q. Do you know why you were there then?

A. No.

Q. How many men would you say were out there?

A. Well, I would estimate around five hundred, I don't know for sure.

Q. Did you see Jack Green out there?

A. No, I didn't.

Q. Did you see your foreman?

A. No.

Q. Did you see your steward?

A. No.

Q. What did you do when you got there then?

A. Well, we just stood around.

Q. And how long did you stand there?

A. I don't think I was over there ten minutes at the most.

Q. Do you recall the names of any person who was 593 out there?

A. Oh, I might recognize some of the buddies that were around there.

Q. Do you recall the names of any of the foremen or stewards that were out there?

A. No, I don't.

Mr. Stoddart: Your witness.

Mr. FitzGerald: No questions.

The Court: Call the next.

You are excused.

(Witness excused.)

Mr. Stoddart: This would be a good time to recess, if your Honor please.

The Court: All right, gentlemen, we will take a ten-minute recess.

(Recess taken.)

594 WILLIAM HOLCOMB, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Alexander.

Q. What is your name, please?

A. William Holcomb.

Q. Where do you live?

A. 1016 West Main Street, Mascootah, Illinois.

Q. What is your present occupation?

A. Leading equipment operator, lead foreman with the Corps of Engineers.

Q. You are a civilian employee of the U. S. Corps of Engineers?

A. Yes, sir.

Q. How long have you been working for the Corps of Engineers?

A. Approximately twelve years.

Q. In April of 1953, what was your position with the Corps of Engineers?

A. Grading equipment operator, same as it is today, lead foreman.

595 Q. Now on the morning of that day—

Mr. FitzGerald: What day, if you please?

By Mr. Alexander: Q. —the 13th of April, 1953—

Mr. FitzGerald: You haven't mentioned it yet, you said in April.

Mr. Alexander: We will make it April 13th, on the morning of that day.

Q. Were you on the levee road at the Chain of Rocks canal moving some heavy equipment?

A. Yes, sir.

Q. In what direction were you proceeding?

A. North, on the west levee, or the east levee.

Q. What kind of vehicle were you driving?

A. A Chevrolet, ton and a half truck.

Q. To whom did that truck belong?

A. To the Corps of Engineers, St. Louis District.

Q. United States Corps of Engineers?

A. Yes, sir.

Q. Were you hauling any equipment back of this truck?

A. I had an Oliver O. C.—three track type tractor on the truck.

Mr. Alexander: Can you hear him?

A Juror: Not very well.

By Mr. Alexander: Q. Will you try to speak a 596 little louder, please?

A. I had an Oliver O. C. type tractor and pulling a John Deere manure spreader behind the truck.

Mr. FitzGerald: I still don't know what he said.

Mr. Alexander: Well, it was an Oliver tractor of some kind hitched, I understand, to a manure spreader.

Mr. FitzGerald: Did you say that you were hauling anything hitched to a manure spreader?

Mr. Alexander: No. He said he was hauling a tractor that had a manure spreader hitched to it, I understood.

The Court: If you gentlemen are confused Mr. Witness, tell them what you were hauling on the truck.

The Witness: On the truck I had an Oliver O. C. track type tractor—

The Court: All right, what else did you say, that you had a manure spreader?

The Witness: I had a manure spreader hitched to the truck, pulling it like a trailer.

The Court: All right.

597 **By Mr. Alexander: Q. Now as you went up over that road, did you notice a crowd of men?**

A. Yes, sir.

Q. Where were you going at that time?

A. I was moving this equipment from the vicinity of the lock and dam 27 over to the west levee south of the bridge.

Q. Now is there a fork on the road just below the bridge south of the bridge where a road turns off the levee road and goes down the ramp under the bridge?

A. Yes, sir.

Q. Where was this crowd of men with respect to that fork in the road approximately? Was it south of it?

A. Well, they were coming up the ramp, in the vicinity of where the ramp tied into the levee on top.

Q. Now how were they coming up the ramp?

A. Walking.

Q. Did you see any cars around there?

A. The only vehicle that I recall seeing was Mr. Lehman's, the United States Government truck.

Q. Well, take alongside the road, were there any cars parked?

598 **A. I don't recall seeing any on top of the levee.**

Q. Were there any down along the side of the road parked?

A. Off of the levee, yes, sir.

Q. Off of the levee?

A. Yes, sir.

Q. These men that you saw coming up, were they coming from the direction of the cars that you saw?

A. Yes, sir.

Q. Did you see on the west berm of the east levee at that time a pieee of equipment—a scoop and tractor?

A. Yes, sir.

Q. Now can you tell just where that was approximately?

A. Well, I would say it was approximately straight west of where this ramp ties into the road into the top of the levee.

Q. How far away?

A. Approximately 150 feet.

Q. Now as you came up to this crowd of men, what happened?

A. I attempted to drive down the ramp—leading off of the levee, top road, and as I started to go down, the 599 men let me drive it approximately maybe 50 feet, men parted, and then they stopped me, surrounded me from back and forward, I could not back up and couldn't go forward because they pushed in around the vehicle.

Q. About how many of them were there?

A. Well, I couldn't—I would have to guess at that.

Q. Well, just your best judgment, Mr. Holcomb.

A. That I could see from where I was sitting?

Q. Those that were surrounding your vehicle, can you give us any judgment as to how many there were?

A. Oh, fifty to a hundred.

Q. Did they say anything to you?

A. No, sir.

Q. Did they make way for you when you tried to go forward?

A. No, sir.

Q. Did you try to go backward?

A. They was too close behind to back up without backing over some of them.

Q. Now at that time did you, or could you see the operator of this tractor and scoop on this machine?

A. No, sir.

Q. Could you see his machine at that time?

A. Not from where I was then, I don't believe.

600 Q. When you first drove by where that machine was, was it in movement? Was the operator running the machine? I am talking about the piece of equipment that was on the berm, the tractor-scoop.

A. State that again, sir.

Q. Was that tractor-scoop in operation? That is, moving when you first saw it.

A. I don't recall.

Q. Now how long did you remain there?

A. Approximately four or five minutes.

Q. Did you see another government truck there?

A. Yes, sir.

Q. Did you see anyone, either in that truck or in the vicinity of it, whom you recognized?

A. Mr. Lehman was standing by the truck.

Q. Was he another civilian employe of the Corps of Engineers?

A. Yes, sir.

Q. How long did you remain there with this crowd of men around your vehicle?

Mr. FitzGerald: I think he has answered it, if the Court please.

The Witness: Approximately four or five minutes.

By Mr. Alexander: Q. What happened then?

601 A. Some gentleman came through the line saying, "Let that truck go."

Q. Do you know who that man was?

A. No, sir.

Q. What did these men do when he said that?

A. They reluctantly parted and let me go on my way.

Q. Now then, where did you go with this equipment?

A. I proceeded down the ramp under the bridge back onto the highway bridge and crossed over to the west highway, started down the west levee going south to where I was working.

Q. Were you going along on the top of the west levee?

A. West, yes, sir.

Q. Now as you went down that west levee, could you see this crowd still over on the east levee?

A. Yes, sir.

Q. Will you state approximately how far you were then from them at that time?

A. I would be guessing. Approximately a thousand feet.

Q. Now as you went down, did you see anything happen in the vicinity of that equipment, the scoop and tractor that were on the west berm of the east levee?

A. I think I recall seeing some men going down the
602 slope of the levee slope.

Q. Approximately how many men did you see go down the levee slope?

A. Well, that would be another guess.

Q. Well, you give an estimate.

A. Maybe twenty-five, thirty.

Q. Now what did they do?

A. That I couldn't tell you.

Q. Did you notice whether or not the driver was on the machine, the operator that was on the equipment at the time these men started to come down the levee?

A. No, sir.

Q. Did you remain there, or did you continue on your way?

A. I continued on to my work on the work site.

Q. Did you have union affiliations before you were employed by the Corps of Engineers?

A. Before I was employed?

Q. Yes.

A. I joined the union in 1944, before I went into Service.

Q. What union was that?

A. The common laborers and hod carriers.

Q. Do you know what local?

603 A. I don't recall the local number right now.

Q. What district?

A. Mascoutah, Mascoutah, Illinois.

Q. You were never affiliated with the local at Granite City, Illinois?

A. No, sir.

Q. Do you keep up your union affiliations with your local?

A. I still hold my card, yes, sir.

Mr. Alexander: I think that is all.

Cross-Examination by Mr. FitzGerald.

Q. Mr. Holcomb, as I understand, these fifteen or twenty men who stopped you when you were trying to drive down the levee said nothing to you at all, they just surrounded your vehicle there, is that right?

A. That is right.

Q. You were stopped four or five minutes?

A. Approximately.

Mr. FitzGerald: That is all.

Mr. Alexander: I think that is all.

The Court: Call the next. You may be excused.

(Witness excused.)

604 KARL LEHMANN, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Alexander.

Q. What is your name, sir?

A. Karl Lehmann.

Q. Where do you live, Mr. Lehmann?

A. Alton, Illinois.

Q. What is your occupation?

A. I work as a Government inspector for the Corps of Engineers, St. Louis District.

Q. How long have you worked in that capacity for the Corps of Engineers?

A. I put in two years civilian and seven years in the Army as Corps of Engineers, officer and enlisted man.

Q. Well, now, of those years—that is nine years?

A. Yes, sir.

Q. Of those nine years, were the last two years the part that is in the civilian service?

A. That is right, yes, sir.

605 Q. But previous to that you had seven years in the Army's military service?

A. Yes, sir, I had World War II and the Korean War.

Q. Have you had any experience in operating heavy equipment?

A. I have with the Corps of Engineers. I was in the army part, I was always with the Corps of Engineers which were construction battalions, aviation battalions which build air fields and combat engineers, they build roads, they build everything,—bridges.

Q. Have you been an operator of tractors, scoops, bull-dozers, and equipment of that kind?

A. The only way that I was an operator, they give me instruction at Fort Belford. I was officer-candidate, to give us an idea how the equipment ran, they put us on different pieces of equipment.

Q. Did your army experience cover working with that equipment, supervising work carried on by that equipment?

A. Yes, sir, that is right. I was a supervisor all the time, never running it, as a supervisor.

Q. Have you taken any course of studies to fit you for your occupation?

606 A. I have had about four courses of civil engineers.

Q. And where was that?

A. I was at Iowa State.

Q. Where?

A. Iowa State College.

Q. During the first part of the year 1953, between January 1, say, and April 13, 1953, were you assigned to any particular project?

A. Yes, sir. I had—we had a contract going with the Terry Engineering Company, one with the Ralph Wright Company—I believe it is Midway Construction Company—and I had one over in Missouri with the Kramer Construction Company.

Q. What were your duties in connection with the work being carried on by Mr. Terry and Mr. Wright?

A. Well, that work was on the west side of the Chain of Rocks canal.

Terry was located by the bridge and Wright was down by the locks. I was to see that they repaired erosion and—oh, deep holes in the levee, maintenance work is what it was.

Q. Well now, their contract also called for work on the east levee?

A. Yes, sir, that is right.

607 Q. Do you know whether the two—

A. Just a moment, sir. I made a mistake. I meant the east levee—I didn't mean the west levee, they had worked over on the west levee. I had my directions mixed. They were on the east levee, I am talking about.

Q. Well, did your duties call for you to become familiar with the contracts under which they operated?

A. Yes, sir. I always got a copy of the contract to read—to keep—and then my superior always took me around and showed me the boundaries of the contract, the bad spots, and so on.

Q. Well now, did the terrain covered by these two contracts overlap, or do you remember?

A. No, sir, they didn't overlap. You mean between Terry—

Q. Between Terry and Wright.

A. No, sir, they didn't overlap. The best way is to read those contracts—I mean it has been a long time ago.

Mr. Alexander: Will you step over here, Mr. Lehmann, and see whether or not you can identify the limits of these two contracts.

Here is one of them, Exhibit No. 3. This 608 is the Midway one—

The Witness: Midway, yes, sir. Well, they—this is, you mean from this—

By Mr. Alexander: Q. From the contract, can you find the stations that are covered?

A. I see. 248 on the west levee—here is 239, would be between here (indicating) and 423 right here, that is on the west side.

Q. Now Exhibit 3, will you look at the Exhibit 2 now—

A. Just a minuate, sir—that is north (indicating).

Q. That is north, and this is south (indicating)—

A. This is west, that is right (indicating).

Q. I see.

Now can you look at this contract, Exhibit 2, and state what work there was on the west?

A. That was between 239 and 349. This is 239 and 349 is here (indicating).

Q. Well, there would be some overlapping then, would there not, between the two contracts?

A. That is true. The only thing is that Wright's contract was given out—he started in September. Terry started in—let's see—Terry started in—

Mr. FitzGerald: January, 1953?

The Witness: That is right, and the only thing that 609 could happen then is that if they would go over it—it could have eroded again and they wanted it repaired again. I mean, that is the only way I see it.

By Mr. Alexander: Q. Will you look at these contracts with respect to the east levee?

A. Do you want them on the map again?

Q. I think you can tell from there, and see if there was any overlapping on those contracts. Those are Exhibits 2 and 3, whether there was any overlapping of the territory covered.

A. Well, Terry is between 418 and 512 on the east side, and Wright was—let's see—449 to 443 of the east side. The fourth site was located 774 and 428. I would say there was—

Q. There was overlapping?

A. Yes, sir.

Q. Who had the duty of assigning the operators of the equipment to the particular work to be done?

A. I assigned them after my superior told me where he wanted them to work. I mean that he would give me a stretch and say, "They are coming in Monday." I would go out to look it over, where to start from.

610 Q. And you had the authority to direct them to use that equipment on any portion of the terrain covered by their respective contracts?

A. Yes, sir. That equipment was the same as being rented by the Government with operators.

Q. Now what was the nature of the work that was being done with the equipment of Mr. Terry and Mr. Wright and carried on by their operators?

Mr. FitzGerald: Are you through with this?

Mr. Alexander: Yes.

Mr. FitzGerald: I would like to see the witness, if you don't mind.

Mr. Alexander: Pardon me, Mr. FitzGerald. I should have had it moved.

The Witness: They were repairing erosion on the levees.

By Mr. Alexander: Q. Will you describe just how these repairs were made?

A. Well, Wright—he had a small—it wasn't small, it was a D-7 and a scoop. He would put his scoop on, and then he would take it off and use his "dozer" for a while. His contract called for a Hy-lift in there, and as far as I supervised the job, he never used a Hy-lift although
611 the contract called for it.

Terry's called for a "dozer" and a scoop, and—Do you want me to tell you how we did it?

Q. Yes, tell us how it was done.

A. Well, they would—the scoop would pick up the dirt off of the levee. We would skim—oh, that may run 75 yards and take up about that much all the way down (indicating).

Q. State the depth.

A. 2 inches, 2½ inches; and by the time we got down to this run, we would have a scoopload—well, it would go back, and drop it along the eroded places at the base of the slope. The erosion was practically always in the slopes, not in the flats on the berm.

Then the "dozer" would come along and push it—this up into the eroded parts.

Now that was run along all the time, I mean the scoop was always maybe a couple of hours work ahead of the "dozer".

Q. Now would that "dozer" work up and down the slope?

A. Normally it would go up and down all the time, yes, sir.

Occasionally, when the erosion was light,
612 up near the top, they would run sideways. They would run sideways, back-blading.

Q. Now what is back-blading? Can you explain that?

A. Well, the operator just runs the equipment backwards with the blade resting on the ground and it is a finished work. When you are finished, you back-blade, you

don't dig. In other words, you can't dig because you are going backwards.

Q. Now what was the character of the soil that they worked with?

A. Oh, I would say the first six inches were sandy, and from then on it was real sandy.

Q. Was that work interrupted with light showers?

A. Sir? My reports would show it. I can't remember, but usually work is interrupted occasionally by light showers.

Q. There were some?

A. My reports would show it. Yes, sir, I imagine there was.

Q. If there was any, they would show it?

A. Yes, sir.

Q. You made a daily report?

A. Yes, sir, a daily report.

Q. Now had you at any time previously in your 613 career, or subsequently, had you had any experience in that particular kind of work?

A. You mean with the other contracts?

Q. That is filling up erosion places that were eroded and leveling them off with this heavy equipment?

A. Yes, sir. We worked—we worked midland—I mean the Midway Construction Company on another contract. We worked Gorham Construction—we worked Sexauer and Longfellow, and then—well, I wasn't with the Government. The Government had a "dozer," but this Bill Holcomb had that.

Q. With respect to the work that these men were doing, these contractors were doing with their operators and their equipment on these specific contracts, was there any necessity in your opinion of employing what is known as a swamper?

A. Well—

Mr. FitzGerald: Just a moment. I object to the opinion of this witness.

The Court: What is the grounds of your objection?

Mr. FitzGerald: I don't think it is a matter of opinion at all.

The Court: Oh, I think he may answer, with his
614 experience give us an opinion that he has.

The objection is overruled. He may answer.

The Witness: Not with two pieces of equipment, no, sir.

By Mr. Alexander: Q. Now were you about your duties with respect to these two contracts on March 26, 1953?

A. What were my duties, sir?

Q. Yes. Did you carry on your usual duties?

A. Yes, sir.

Q. Do you remember any occurrences on that day with respect to these operations?

A. Well, on March 26th, I was on the Terry job and Terry—his two operators and his foreman were there. I was talking to his foreman on top of the levee when a car came along, a pick-up truck, and there were four, five, six men that came out of the truck; and they came up the levee slope and asked me if I was Terry's superintendent.

I told him, no, I wasn't.

And they went over to this man Clifton and started talking to him.

615 I walked away—I didn't— It wasn't none of my business. I walked away. I didn't hear anything that was said.

The next thing I know, they came over and told me that they shut—

Mr. FitzGerald: Just a moment, please. Don't tell what was said.

By Mr. Alexander: Q. Who came over?

A. Clifton came over.

Q. I see. Had they been operating under the contract up until that time?

A. Yes, sir.

Q. Did they continue to operate after those men came there?

A. No, sir.

Q. Did you know any of those men?

A. No, sir.

Q. Did you see in what direction they came from?

A. Yes, sir. They came—there is a river road underneath the bridge, this canal bridge—Chain of Rocks canal bridge, and they came from the north, and were headed down river with their cars. I mean the fronts of their cars were headed down river. That is the only way I 616 could tell you the direction.

Q. Did you see them leave?

A. I possibly did, but I didn't pay any attention, I mean.

Q. What I wanted to know is if you knew whether they went back or continued down south.

A. No, sir, I couldn't tell you.

Q. If you know.

A. I couldn't tell you.

Q. Now, taking that road under the bridge, where can you go to by that road?

A. You can go down the levee from the bridge all the way to—of course it meanders in and out towards the levee, but you can go all the way down to Granite City that way. The other way you can go up—oh, I would say, two—no, maybe about a mile, and you cut off to the highway.

Q. Do you know what highway?

A. I should know. I travel it all that way. It is a cross-road—it is across east 66 by Granite City, I think it is 67, I'm not sure, I paid no attention to it.

Q. It is a State road, is it not?

A. Yes, sir, it is a State Highway.

(Whereupon some documents were marked Govern-
617 ment's Exhibits 14 and 15 for identification.)

By Mr. Alexander: Q. Did you on that day—on any occasion go down where the equipment of the Midway Company was operating?

A. Yes, sir. After they stopped work there, I went down to see what happened down below.

Q. When you got down there, was the equipment operating?

A. No, sir.

Mr. FitzGerald: This is on March 26th?

Mr. Alexander: Yes.

Mr. O'Neill: What company, Marks? Which is 14 and which is 15?

By Mr. Alexander: Q. Were Mr. Wright's employees still at the site of the job?

A. Yes, sir, I believe Frank Neely was there and told me that they had shut him down. Luhning was there, Frank Luhning.

Mr. FitzGerald: I would like to know what you are talking about when you are talking about that?

Mr. Alexander: I will do the best I can, Mr. FitzGerald.

618 (Whereupon a document was marked Government's Exhibit 15 for identification.)

The Court: Do you think it is a good time to stop now?

Mr. Alexander: It is all right, your Honor.

The Court: Do you want to produce them now? We got time for those.

Mr. Alexander: They are Government's Exhibits 14, 15 and 16.

Mr. FitzGerald: Wait a minute, that doesn't mean anything. What is Government's Exhibit 14?

Mr. Alexander: I am going to ask the witness, Mr. FitzGerald.

Mr. FitzGerald: No, you tell me.

Mr. Alexander: No, I am going to ask the witness. I will finish these, and then I will suggest quitting.

By Mr. Alexander: Q. Will you examine Government's Exhibit 14 and state what that is?

A. Well, that is a daily report that I turned in on the 26th of March. That states that the work was stopped at—

619 Mr. FitzGerald: No, not what it says.

By Mr. Alexander: Q. Not what it states.

A. Excuse me.

Mr. FitzGerald: I object.

By Mr. Alexander: Q. Don't state that. Tell us what it is, not what it states. It is your daily report?

A. I thought you wanted me to tell it all. That is my daily report.

Mr. FitzGerald: Of what company?

The Witness: March 26th.

Mr. FitzGerald: Of what company?

The Witness: Terry Engineering Company.

By Mr. Alexander: Q. Now Government's Exhibit 16.

A. This is the 26th of March, 1953, for the Midway Excavation Company, my report, daily report.

Q. And now Government's Exhibit 15?

A. This is the 13th of April report on the Terry Engineering Company, it is my report.

Q. Now we are to the 13th of April, and I would just as soon recess now, if your Honor please.

The Court: All right. It is rather difficult for the court to try and inform you that you should do everything in your power to not be persuaded or talked to or have 620 different people tell you what you ought to do. It is unusual to stop a case at the end of the week and go

over until Monday because of the danger that somebody is going to try to influence you or something of that sort.

I have faith enough in this jury that it isn't going to happen. But it is impossible for us to go on if we would stay here all day tomorrow, as we still would not be through. I have been advised that we would be through in the first few days of next week. I say that for your own benefit so you can govern yourselves in your business relationships.

Try and do everything you can not to form an opinion of this case.

You haven't heard all of the Government's case, let alone that you have heard nothing of the defense. So let's try to keep our minds open. Let's try to come back Monday morning just as conscientious about the evidence as
we have been up to now without anybody interfering
621 with you or talking to you about what you ought to
do.

You know in cases of this sort it is very easy for somebody who knows nothing about it at all, because they have views on government and views of this, that, and the other thing, they might try to express to you something to influence you.

You have been selected here as people who are capable of passing on the facts yourselves, and you don't need any outside interference. You don't need any suggestions of policy, you don't need anything else. And if you will come back in that frame of mind on Monday morning at ten o'clock, we will try to finish this case as speedily as possible.

The court will instruct you, and then I am sure that both sides should at least be satisfied, if you go to your jury room and determine this question according to your own minds and not interfered whatever by anybody else, so
I am sure you will do that, and you are now excused.

622 Be back, if you will, next Monday morning at ten o'clock in the jury room.

(Whereupon the jury retired from the court room.)

The Court The court may be adjourned until next Monday morning at ten o'clock.

(Whereupon these proceedings in the above-entitled case were adjourned until Monday, September 20, 1954, at the hour of 10 o'clock a.m.)

623 Court reconvened in the above-entitled cause at the hour of 10:00 o'clock a. m., September 20, 1954, pursuant to adjournment.

Present:

Same as before, to-wit:

Mr. Alexander, Mr. Oxtoby, and Mr. Stoddart, appearing on behalf of the Government;

Mr. O'Neill and Mr. FitzGerald, appearing on behalf of the defendants.

624 KARL LEHMANN, a witness heretofore called on behalf of the Government, and having been heretofore first duly sworn, resumed the stand and testified further as follows:

The Court: You may examine, gentlemen.

Direct Examination (Continued) by Mr. Alexander.

Mr. Alexander: If your Honor please, I just wanted to clarify the record.

The Court: You had a couple of exhibits?

Mr. Alexander: Yes.

Mr. FitzGerald, will you step up a moment, please?

Judge, in looking over our record, we intended to offer

Exhibit 13, which was the set of four photographs, 13-A, 13-B, 13-C, 13-D.

Now we offered -A, -B, -C and -D, the official record will show I offered Exhibit 13 also, I think.

The Court: You can offer it now if you want to. There is no objection.

Mr. Alexander: Yes, your Honor, I will offer it.
625 We will offer Government's Exhibits 13.

The Court: If there is no objection, it may be admitted.

Mr. FitzGerald: Yes, your Honor, no objection.

(Whereupon said GOVERNMENT'S EXHIBIT 13 was received in evidence.)

Mr. FitzGerald: You had Government's Exhibits 14, 15, 16 as the last Government's Exhibits?

Mr. Alexander: Yes.

The Clerk of the Court: Government's Exhibit No. 17 for identification purposes.

(Whereupon a document was so marked.)

By Mr. Alexander: Q. Mr. Lehmann, will you look at Exhibit 13, the photograph on the front of that little circular, and state what that picture represents, please state what that is a picture of.

A. That is a picture of the lock on the Chain of Rocks canal. The top of the picture faces toward St. Louis.

Q. In other words, the top of the picture is south?
626 A. That is right.

Q. And the bottom is north?

A. Is north, that is right.

Mr. FitzGerald: That is Government's Exhibit 13, Mr. Alexander?

Mr. Alexander: Government's Exhibit 17.

Q. It shows the lock?

A. Yes, sir.

Q. Does it show the levee, portions of the levee on the east side of the canal?

A. Yes, it shows a small portion of the levee on the east side of the canal.

Q. And a more extensive portion on the west side?

A. That is correct, sir.

Q. Off in the distance in the picture, what is shown there in the background?

A. You mean the City of St. Louis?

Q. The buildings, is that St. Louis?

A. Yes, sir; that is St. Louis.

Q. And a portion of the Mississippi River is shown?

A. That is right, it is the mouth of the canal coming out into the Mississippi River.

Q. Now that would be approximately how far south of the scene, or the job site of Mr. Terry, the contractor, 627 on April 13th?

A. You mean the locks, how far—

Q. Yes, about approximately how far?

A. Oh, that would be about four miles south.

Q. Is the levee shown on the two sides of the photograph, is that approximately the same with respect to the levee up on the Terry job site?

A. Yes, sir, it is.

The Clerk of the Court: Government's Exhibit No. 18 for identification purposes.

(Whereupon the document was so marked for identification.)

Mr. FitzGerald: No objection to Government's Exhibit 17 or Government's Exhibit 18.

The Court: Is that offered?

Mr. Alexander: Yes, we will offer them.

I will ask the witness what Government's Exhibit 18 is?

A. Oh, that is a view of the Chain of Rocks canal. It is a view of the Mississippi River, and shows the canal cutting off quite a part of the Mississippi River going through.

Q. Now that is substantially the same as Government's Exhibit 1, isn't it? Exhibit 1 is a detailed draw-
628 ing.

A. Yes, sir, and the one I just looked at was the locks more than the entire canal.

The Court: You offer Government's Exhibits 17 and 18?

Mr. Alexander: Yes.

The Court: They may be admitted without objection.

(Whereupon said GOVERNMENT'S EXHIBITS 17 and 18 were received into evidence.)

By Mr. Alexander: Q. Now there is a pencil mark there on the east side of the levee up near the bridge. I will ask you whether or not that marks approximately the job site on April 13.

A. No, sir; it should be up closer to the bridge—much closer, and on the other side. Oh, I see what you mean. Oh, you have it. It is on the river side of the canal from this access on the land side. It should be closer to the bridge. The scale of the map puts it about a quarter of a mile away, and it wasn't that far.

Q. Wait a minute. On April 13th wasn't the job site on the east levee?

629 A. Yes, sir; but there is a land side of the levee, and there was a river side on which he was working also.

Q. On the river side?

A. On the river side, yes, sir, and you have it—

Q. We have it on the land side?

A. Yes, sir.

Q. And it would be across on the—

A. That is right, just on the other side.

Q. On the canal side?

A. That is right.

Mr. FitzGerald: Mr. Lehmann, I didn't understand who was working on the river side.

The Witness: Terry was working on the river side of the canal.

Mr. FitzGerald: Not on the land side?

The Witness: No, sir. Now you mean on that date when this happened?

Mr. FitzGerald: Yes, April 13th.

The Witness: That is right, he was on the river side of the canal, we call where the water is the river side, it is the canal that is running through.

By Mr. Alexander: Q. But it is the east side of the canal, is it not?

A. Yes, sir. You see, there is two levees, one on
630 the west side of the canal and one on the east side.

We are on the east side of the canal where Terry was working.

To pin point that, you want to know whether he was working on the land side or this side facing the river. Well, he was on the river side of that east levee.

Mr. FitzGerald: Wait a minute, you mean east side is west side, or west side is east side?

By Mr. Alexander: Q. Now here is the levee (indicating)—east levee running up and down.

A. Yes.

Q. Down at the foot of that levee on the west side of the levee is the canal.

A. Yes, sir.

Q. And he was on the west side of that levee?

A. The west side of the east side.

Q. But he was on the east side of the canal?

A. That is right; but the—well, that is all right.

Mr. FitzGerald: Well, I still think of it as the river side.

The Court: Go ahead.

By Mr. Alexander: Q. Mr. Lehmann, on the morn-
631 ing of April 13, 1953, what time did you go to this job site?

A. I got down there shortly after eight o'clock.

Q. When you arrived there, was anyone present?

A. Yes, sir. I was within about—oh, a hundred yards of where they—where Terry parks his equipment.

When I ran into Terry in his car, he had two men with him, and the operator of that piece of equipment was there. He was in his car too.

Q. Where was Terry's car with respect to the top of the levee?

A. He was on the river side. It was a junction of a road there. I came down from the highway, and he was coming out towards the highway No. 66.

Q. Was his car moving when you first came?

A. Yes, he stopped then, of course, when he saw me.

Q. Then what did he do?

A. Well, he said, "Good morning" and he told me that he—

Q. Not what he told you.

A. What did he do?

Q. What did he do? Did he go on, or did he go back?

A. Yes, sir. He went on then after he talked to 632 me a while, he went on.

Q. Do you know where he went?

A. No, sir, I don't.

Q. Then where did you go?

A. I went up on top of the levee, right opposite where the work was and waited for this operator and piece of equipment to come down there.

Q. The operator was not there at that time?

A. He was there, but he needed a part for that piece of equipment. I think it was a bolt—it was a minor piece. He could have gone in the little town of Mitchell up there, I think that is where he went.

Q. Did you remain there until he returned?

A. Yes, sir.

Q. How soon would you say he returned?

A. Oh, he was back, I would say, between twenty-five minutes, twenty minutes, something like that.

Q. Then what did he do?

A. When I saw him, he had already put the bolt on and was coming towards me, and that was about twenty-five minutes.

Q. In other words, he was then operating this equipment?

A. Yes, he was operating, and he had come to the 633 job site.

Q. Do you know who that man was?

A. Yes, sir, that is a fellow by the name of Voyles, I think, or Boyles, I guess his name was.

Q. Now had Mr. Terry come back by that time?

A. No, sir, he had not come back by then.

Q. Did you see any car come to the vicinity of this job during this period?

A. I saw a car. I better explain my position. I was facing the direction this tractor was coming towards me, and I also was facing the highway bridge. And I saw a car, that was the Cadillac car that was the color of Mr. Green's almost stopped on that bridge, and he was looking like he was looking towards my direction and the equipment direct.

Q. Did you notice where that car went?

A. No, sir; I didn't pay any attention to it. I know it had to go across the bridge; to turn around, it couldn't do that on the bridge.

Q. Were there any other people there aside from Mr. Terry and the operator of that vehicle?

A. There were two men, yes, sir, with Mr. Terry.

Q. Do you know who they were, or did you learn?

A. I learned later that they were sort of like body-
634 guards for Mr. Terry.

Q. Did Terry return to where you were?

A. He came—I went down off the levee to where the equipment had to work, and showed the operator what we were doing. He was a new man, the first time out, and I showed him what we were doing.

While I was out there, Terry came back and came down the levee.

Q. Where did he leave his car?

A. He left his car on top of the levee on the road up there.

Q. How did you come to the job site that morning?

A. I came by government truck.

Q. Where was your truck with respect to Terry's car?

A. Oh, my truck was a hundred yards from his, or seventy-five.

Q. Now did anyone else after that come to the job site?

A. Yes, sir. I think about fifteen or twenty minutes after Terry came down the levee, I went back on top of the levee and I saw two or three cars there, and I would say six or seven men.

Q. Do you know who they were?

A. Some of them were—the two of them were the
635 ones that came with Terry, one of them was Terry
and then I found out who his men were later. Do you want me to tell you who I found out?

Q. Yes.

A. They were the sheriff and his deputies.

Q. During that time did anyone else come, any car drivers?

A. Well, you mean at that moment?

Q. Well, I don't know just what moment; it may have been a little before or a little after, did another car come there?

A. I didn't see any other car.

Q. Did you see a Cadillac coming there?

A. No, sir.

Q. Did you see a Cadillac car and a man get out of it and go over and talk to one of the deputies?

A. No, sir.

Q. Did you know Jack Green at that time?

A. I knew Jack Green because he had been pointed out to me when he was checking jobs—oh, for a couple of times before he come out and checked jobs on the levee, and somebody would say, "There comes Jack Green" and I passed him on the levee close enough so that we had to pull over to let each other by.

636 Q. Did you learn when you went up there, or shortly thereafter, that Jack Green had been there?

A. Well, I knew that Jack Green was coming there because Terry told me when I came down the levee slope that he—

Q. Well, let's not go into what Terry told you.

And that is the way you learned—you didn't see him come there and then go away?

A. I didn't, no, sir.

Q. Now what was the next thing that happened there?

A. Oh, about twenty minutes after I came up on top of the levee—

Do you want me to go into detail of what happened?

Q. Yes, I want you to go into detail now.

A. There is a few men came—about four, five men came in a car, and they stopped on the levee and they got out.

I was in my truck at that time, and I wanted to find out what was going on. So I drove up to where Terry's car was parked, and stopped in the vicinity of it.

Q. How close were you—did you stop your truck?

A. Well, the first time I stopped, I suppose twenty

637 yards.

Terry's car was between me and the crowd—I mean, not the crowd, the deputies, the deputies. That was the first time.

So while I was sitting there, one of Terry's friends came—got out of this car—out of Terry's car and went and joined that group over there.

Then about that time there was more men started to come.

I pulled my truck up there further then so that when—where I stopped, Terry's rear end, of Terry's car, was opposite the rear end of mine.

As they—more men came, Terry made a trip back to the car and went back to the crowd.

Now do you want me to say what these men said?

Q. Well now, during this time, did you see a government vehicle—well, I will withdraw that for a moment.

As these additional men came, how many of them would you say there were?

A. Well, when I moved the car up the last time, I guess there were about, oh, forty men, thirty or forty men there at that time.

638 Q. Now did they continue to come?

A. Yes, sir. I was facing south, and these men were all coming from behind me, and I didn't even look back, but that is where they were coming all the time, from behind me.

Q. Now at that time, after that, did you see an employe of the United States on that job drive a truck north on the levee road?

A. Yes, I did.

Q. Hauling some machinery?

A. Yes, sir.

Q. When he came in the vicinity of the job site, what happened?

A. Well, they stopped him. This crowd—this mob stopped him there and held him up for a while.

Q. Now did you hear anything said?

A. I heard when they stopped, somebody hollered, "This is a contractor's truck!"

And they stopped him.

Of course, I didn't hear anything after that, I mean what was said. That is all I ever heard.

Q. Well now, how long was he stopped there?

A. I would say about under five minutes.

639 Q. Well now, just how did they stop him?

A. Well, from what I could see, there was just such a big body of them that he had to run over them—they just blocked the road.

Q. Did you see where he went after they let him through?

A. He went down the road ramp to this bottom road, the river road, and that is all I know, he went down the river.

Q. That goes under the bridge?

A. That is correct, that is right, he could have went in any direction from there.

Q. What was the next thing that you saw happen there?

A. Well, those men about the same time that was going on that stopped the truck, and he was—about the same instant they let him go, somebody hollered, "Let's circle that tractor," or well, I won't say hollered, there was a lot of hollering going on.

They ran down, about fifty men, and stopped that tractor.

Q. How did they stop it?

A. It looked to me like they just got in front of him so he would have to run over them if they didn't

640 stop.

Q. Did you see what the operator did?

A. He got off the tractor, yes, sir.

Q. Now what happened after that?

A. Well, about the same time they were surrounding this tractor, they surrounded Terry's automobile, and I did hear a man holler a couple of times to this mob coming up to circle this car, "Jack wants this car circled" is what I think was said.

Q. How about your truck, was it circled?

A. Well, there were so many men came that eventually it was circled; but I don't think there was any intention to circle mine.

Q. By that time have you any estimate or judgment of the number of men who were out there?

A. Well, I would say they were—I think I made a report that day there was 700 men.

Q. That was your judgment, I presume.

A. Yes, sir, that was my judgment.

Q. Well, what was the next thing that happened, Mr. Lehmann?

A. Well, these men—there was such a big crowd that I couldn't see the deputies—I couldn't see Mr. Green, I couldn't see Terry, anybody, they were too far
641 away.

Q. Well, by that time had you seen Mr. Green there at all?

A. Yes, sir, I had seen him.

Q. Where was he when you first saw him?

A. He was up towards the deputies. Terry was up there, and he was up there, and Terry's friends of the deputies were.

Q. All right.

Now, then going back to this time, what next happened?

A. Well, in about four or five minutes, four, five minutes he came towards—a deputy sheriff came towards this automobile of Terry's and he said, "Let this car go."

But they didn't pay any attention to him.

Q. Now where was Terry with respect to his car at that time?

A. He was up there with Mr. Green and the deputies in that group up there.

Q. Well, then what happened?

A. Well, this deputy came, and the deputy turned around—he must have taken two or three steps backward, and Jack Green came through with Terry, and one of those men in front of him.

642 When he got near the car, he said, "Let these men—let this car go."

Q. Who said that?

A. Jack Green.

Q. Did he say anything further at that time?

A. Yes, sir. He started to curse Terry. He cursed him all the way to the automobile.

Q. What did he say to him in substance?

A. Oh, you mean the words?

Q. Well, leave the profanity out, if there was any, and just tell the substance of what he said to him.

A. Well, at first he told him that he wasn't going to have him over there with his scabby ways or with his scabs lousing up the work on this side.

Then he got up there a little further, and he told Terry that—let's see if I can get the words here—that he could bring—that he could bring all of the guns and all of the goons he wanted over there and he would give him all of the competition he wanted; and then he said that he would give him competition on the other side, too.

Then he told him to get across the river and stay there.

643 Q. During that period of time could you see these two men who had accompanied Terry that morning?

A. I saw this one, a younger man—heavier one, come back to the car and get in with Terry and leave with Terry, but I never did see the other man.

Q. You don't know where he went?

A. I don't know where he went, no.

Q. How long did Terry remain there after that?

A. Oh, he got out of there as soon as he could—as soon as he could get in his car he started it and left.

Q. Did anyone go with him?

A. The little—the younger heavy man then went with him.

Q. From the time that Mr. Green made this statement which you have related to Terry to the time that Terry left, how long was it?

A. I would say it was less than two minutes. I would say it is even less than that because Terry was walking all the time and got in his car and then left.

Q. Well now, as he approached his car and got in, did you see anything happen?

A. Well, yes, sir. I saw one laborer come from
644 Terry's right, start shouldering through the crowd, and Mr. Green hollered there, "Let him go! Don't hurt him!" And this laborer was after Terry—I mean he was ready to hit him.

Q. Did you see what he did?

A. Yes, sir. He drew back his hand. Mr. Green grabbed his arm.

Q. Did you see what Terry did?

A. Well, Terry—I didn't know if he knew what was going on. He kept walking. This man was towards him—almost towards his rear when he got up to that point, and Terry took a few more steps on, and Mr. Green said something to him again and Terry said, "Yes, sir" and another laborer said, "you are acting smart now, aren't you?" and he swung at him.

Q. What did Terry do?

A. Terry threw up his arms like that (illustrating) until he got to his automobile.

Q. Now Mr. Lehmann, did you see any firearms there?

A. Yes, sir, I saw firearms.

Q. Well now, tell what you saw with respect to firearms.

A. Well, before these men started coming, this
645 short, young—I believe he was a wrestler—was sitting in the front of Terry's car.

Q. Well, was he one of the men that came with Terry that morning?

A. Yes, sir, one of Terry's friends or bodyguards, and he was sitting on the rider's side in the front of the car, and he got out, and as he got out, a gun fell out of his waistband, and he caught it with his hands before it hit the ground and shoved it back in the waistband, and went over and joined the deputies and Mr. Green and Mr. Terry.

Q. Now did you see anything else there during this period with respect to a gun?

A. With a firearm?

Q. Yes.

A. Yes, sir, I saw Mr. Terry come back to that automobile by himself. I saw him get in. He didn't get in the car, he leaned into it, and a few seconds he turned around and walked away, and I saw a gun butt out of the coat pocket of his car—I mean his coat.

Q. What kind of a coat was that?

A. It was a topcoat, a winter coat.

Q. Do you know what pocket?

646 A. I think it is the right pocket, the right side.

Q. How long did you stay there after Terry had left?

A. I stayed there until there wasn't a soul left on the levee but me.

Q. I will show you Government's Exhibit 14 and ask you whether or not that is the official report you made with respect to what was done on the Terry job site by his

employe on the 26th of March, 1953, and the occurrences there?

Mr. O'Neill: Which exhibit is that, Marks?

Mr. Alexander: Government's Exhibit 14, is it not?

The Witness: Yes, I don't know, I guess it is No. 14.

By Mr. Alexander: Q. It is on the back.

A. It is 14, yes, sir. Yes, sir, this is a copy of my report that I turned in that day.

Q. And Government's Exhibit 16, is that your daily report for Thursday, March 26, 1953, with respect to operations of the Midway Excavating Company on that day?

A. Yes, sir, this is for the 26th of March, Midway.

Q. Now Exhibit 15, is this a copy of your report of the occurrences at the site of the job of Mr. Terry on 647 April 13, 1953?

A. Yes, sir, this is it.

Q. Do you remember during this period of time when Mr. Terry was talking to Mr. Green and to the deputies and moving back to the car, moving back to the car or leaving the site of this job, did you notice anything occur with respect to Mr. Terry's car and the acts of any of the men there?

A. Well, while they were in this conference going on up there, one of these laborers shouted to the others, "Let's roll it into the canal," and they didn't roll it in the canal. Then when Mr. Green and Mr. Terry came back, Terry got in his car, and as he drove off, they kicked and they pounded on it, and one of them said, "Let's follow him!"

Q. Did anyone follow him?

A. No, nobody followed him, no, sir.

Mr. Alexander: We will offer Government's Exhibits 14, 15 and 16 in connection with the witness's testimony.

Mr. FitzGerald: I thought you had already offered them.

Mr. Alexander: I don't think that I made the offer. I had them identified.

648 Mr. FitzGerald: No objection.

The Court: No objection, they may be admitted.

(Whereupon said GOVERNMENT'S EXHIBITS 14, 15 and 16 were received into evidence.)

Mr. Alexander: You may take the witness.

Cross-Examination by Mr. FitzGerald.

Q. How long have you been in the employ of the Government as a supervisor?

A. As a civilian?

Q. Well, either a civilian or while you were in the service.

A. Altogether about nine years.

Q. Doing the same sort of work that you have been doing at the period that this canal was being constructed?

A. In the army, sir, I didn't do any levee work, but I did quite—had quite a bit to do with heavy equipment.

Q. Was your work on the Chain of Rocks canal during the period of your civilian employment?

649 A. No, sir. I worked in the Wood River area too, and I worked in the Duquoin area north towards East St. Louis.

Q. While you were in the service?

A. No, sir, civilian. I didn't understand you to say in the service. In civilian work, sir.

Q. I mean all of the work that you did while you worked on the Chain of Rocks project was during the period you were a civilian employe.

A. That is right.

Q. You mean you had, during the same period when you were not still in the service, done work at other places, is that right?

A. That type of work on levees, no, sir.

Q. Well, any work.

A. I don't understand your question then, sir. Would you repeat that?

Q. What sort of work were you doing on the Chain of Rocks that was different than the work you did other place while you were in the civilian—service, any different?

A. No, sir.

Q. Well, that is what I mean, you were doing the same type of work?

650 A. That is right, yes, sir.

Q. Always while you were a civilian employe?

A. Yes, sir.

Q. While you were in the service, did you operate some of these large "cats" and other heavy equipment?

A. No, sir, I never was an operator.

Q. Just doing inspection and supervision work, is that right?

A. Yes, sir, I knew what the equipment could do, that is right.

Q. Now Mr. Lehmann, as I understand the situation, when you first got out there in the morning, there was no one on the levee in the vicinity of the Terry work or the area they were working upon except the operator, Voyles, is it Voyles or Boyles?

A. I think it is Voyles.

Q. Voyles, I thought.

A. Voyles.

Q. Except the operator Voyles of one of the machines that was there.

A. He wasn't actually there, he went for this part.

Q. Well, was he there when you first went there?

A. Yes, sir, he was in his car getting ready to go 651 for that part.

Q. But he was the only one there?

A. Outside of Terry.

Q. I don't mean he was operating it when you came.

A. That is right.

Q. Mr. Terry hadn't come up yet?

A. Yes, sir, Mr. Terry was up there.

Q. He was there when this fellow went out to get the bolt you mentioned?

A. There—they all were there at the same time.

Q. I see, there weren't any other persons around on the levee at that time, were there?

A. None that I know of, no, sir, I didn't meet any.

Q. You didn't see any?

A. No, sir, I didn't meet any.

Q. And the fellow came back and started, and Terry went down to the place where he was. Did he come back to the car before others arrived?

A. Did Terry come back to his car before the crowd arrived?

Q. Yes. Well, did anyone arrive?

A. Well, the only time I know he came—I knew he came back to his automobile—was when the crowd was coming when I was up there.

652 Q. Was that after the deputy sheriffs had come?

A. Yes, sir, that was after that.

Q. That is before the major portion of the crowd came?

A. That is right; but some of them had already arrived before the major portion got there.

Q. But the deputy sheriffs, had they come up in the vicinity of Mr. Terry's car?

A. I don't think—I wouldn't know because I was down below quite a bit of that time, that they were standing up there.

Q. Well, when you did come back up to the vicinity of Mr. Terry's car, was he in his car or was he out on the levee somewhere talking with someone?

A. I couldn't recall that. I think he was out talking to somebody.

Q. Do you know with whom he talked?

A. He was with that group of men up there, the deputies and his friends.

Q. That is one of the bodyguards?

A. Yes, sir.

Q. Do you know their names?

A. Only since I have been here, I think one of them is Zinn.

Q. Was it Zinn or Florence who was up there?

653 A. Zinn is the young, heavy one, if he is, that is him.

Q. They both looked heavy to me, Mr. Lehmann. I don't know about your description of young and heavy.

A. One of them is about fifteen years older or ten years older, I would say.

Q. You may be a good judge of age, I never knew anything about it.

Was it Zinn who was up with him, do you think, if he is younger than Florence?

A. If he is the young one, that is Zinn, yes, sir.

Q. I cannot answer it.

A. I cannot either, I don't know either.

Q. Say Zinn was up there then, where was Florence at the time that he was up talking with the deputy sheriffs?

A. The other man, I don't know, I don't know where he was.

Q. Had Jack Green come there upon the levee when you first saw Terry talking to the deputy sheriffs?

A. I never saw Mr. Green until the crowd came. He might have been over there.

Q. After Mr. Green came there, did Terry stay

654 with the deputies, or did they all move up closer to his car?

A. It looked to me like they all just about stayed in the same place in the middle of the road.

Q. Well, his car was on top of the levee?

A. Not near Terry's car, no, sir, because I was parked there.

Q. They didn't come up to Terry's car?

A. No, sir, I didn't see them.

Q. Did the sheriff drive a car, or did the sheriff and his deputies drive more than one car up on the levee?

A. The sheriff drove away an automobile himself and there were other cars, I suppose these deputies came in some of those other automobiles.

Q. Were they about the sheriff's car, Terry and Zinn and the deputies when you first noticed Terry talking with them?

A. Of those automobiles up there, there was only one parked away that was Terry's.

Now those group of cars, I don't know which was the sheriff's, which was whose, they were standing in that vicinity.

Q. How many cars were up there on the levee 655 farther beyond, south of the Terry car?

A. You mean before anybody else came?

Q. Yes.

A. There weren't any cars that I saw that did not belong to that group of deputies or his friends.

Q. You mean the deputies?

A. Yes, sir.

Q. All right. Now had Terry gone back before the crowd began to arrive?

A. Gone back to his car?

Q. No, gone back to the sheriff's car.

A. Yes, sir. The only thing I know is that when the crowd started to come up there, Terry came back to his car, and I wasn't paying such close attention to Terry but he came from the direction the deputies were.

Q. About how long, Mr. Lehmann, if you recall, did he remain down there talking with the deputies when Mr. Zinn was with him?

A. I would say twenty-five—something like that, minutes, twenty minutes.

Q. Did you see Mr. Green drive up on the levee at any time?

A. I never saw Mr. Green until he was out of his
656 car, standing with those men up there.

Q. With the deputies?

A. Deputies.

Q. Now had Mr. Terry left the deputies to return to his car before he saw Mr. Green with the deputies?

A. I couldn't answer that.

Q. You don't know?

A. No, sir.

Q. Now after you did see Mr. Terry go back to his car, how long was it until Mr. Green came and told the men to let Mr. Terry go through, not to have any trouble, or whatever he said?

A. I would guess that it was between ten and fifteen minutes.

Q. Now from the time that Terry first came there, how much time had intervened between his arrival upon the levee and when Mr. Green told him, or told the men, to let Mr. Terry move his car and get away?

A. I would say no more than—total time no more than an hour and a half.

Q. How long was it before you first saw Green when Green told the men to let Mr. Terry leave in his car?

A. I don't understand, how long, was it that?

657 Q. How long from the time you first saw Mr. Green there on the levee until he told the laborers, or the men who were about there, to get out of the way and let Mr. Green on, go on, let Mr. Terry go on?

A. It could not have been more than twenty minutes.

Q. Mr. Lehmann, when on all of the levee work there are deep erosions, is there any way that the operator of the bulldozer can tell from a distance the depth of those erosions until he is very close to them?

A. Yes. He sits up in the air about—oh, I imagine his eye level is 9 feet off the ground; in his seat, he certainly can see them before he gets to them.

Q. Is there usually in all of the handling of the levee—usually in all of the handling of the heavy bulldozers, usually when there is danger of the operator not being able to tell the depth of a hole ahead of him, that someone spots that hole for him and signals to him?

A. I could not answer that. We never let erosion get that bad. We are a maintenance crew.

Q. You mean you try not to, don't you?

658 A. I have never seen it that bad.

Q. I understand you have never seen it that bad.

A. No.

Q. The first experience in levee work was on the Chain of Rocks, wasn't it, that you had?

A. No, sir. My first experience—well, yes, sir, it was the first on the Chain of Rocks, yes, sir, that is right.

Q. Mr. Lehmann, if it is not possible for the operator of the "cat" to see the depth of a hole which he is expected to fill or move dirt upon, and he gets into that hole, isn't there danger that the big track machine may upset?

A. Yes; but I didn't say it was not possible.

Q. Just answer my question.

A. Any time a man falls in a hole, his equipment can turn over, yes, sir.

Q. When a contract is let in which there is to be worked heavy machinery like the bulldozer, the working of that track machine depends, as far as efficiency of it is concerned, upon keeping the track upon which the machine

operates clear, not clogged with mud, dirt, or any other thing that would impede the operation of it, isn't that
659 true?

A. No, sir. The only thing that mud does is that when it is freezing weather, clog it up. These tractor operators never clean the mud off in good weather. It always picks it up again. A tractor is a powerful thing.

Q. You say they do not clean it off?

A. In the summer I have never seen them clean it.

Q. What about wet grass?

A. Sir?

Q. What about wet grass?

A. Wet grass?

Q. Yes, sir.

A. Well, sir, what do you mean, what about it?

Q. Do they have to clean that off, would that make the track slippery?

A. No, sir.

Q. It would not?

A. No, sir.

Q. What about twigs?

A. How much are you talking about, wet grass? I mean, just what you pick up in a normal working?

Q. It depends on where you are running the "cat", does it not?

660 A. We don't have that much grass on the levee, sir.

Q. I didn't ask you what you had this time. I'm asking you a question.

Will wet grass impede it and interfere with it?

A. The amount on levees, no, sir.

Q. Generally?

A. Generally, no, sir.

Q. It won't?

A. No, sir.

Q. What about the roots and twigs of growing things, any growing things?

A. Like bushes or trees?

Q. Yes, sir.

A. Sir, we don't have them on our levees, that is not allowed.

Q. I did not ask that.

Would that not interfere with the operation of the track and the bulldozer?

A. I suppose so; I have never seen it, sir.

Q. Well, as a matter of fact, in so far as your experience with levee work is concerned, it was of what period, there at the Chain of Rocks?

A. Oh, the Chain—I have been off and on on that,
661 oh, I would say most of the time. We always had a little job going on.

Q. That would be about two years?

A. During two years, off and on, yes, sir; most of the time we have worked on the Chain.

Q. Most of the time you worked on the Chain?

A. Yes, sir.

Q. That is what you call this project, the Chain project?

A. Yes, sir. It is quite a long thing.

Q. I see. Now during that time, were you doing the same, and the only thing you were doing at the time in March and April of 1953 that you then were doing, had you done other work?

A. With other contractors, but the same type of work.

Q. Were you there when the Terry job was finished?

A. Yes, sir.

Q. Who finished it?

A. Gorham Construction Company.

Q. Did he use a laborer on the same job?

A. Yes, sir.

Mr. Alexander: We object.

Mr. FitzGerald: I think I have a right to know.

662 Mr. Alexander: We will withdraw it.

The Court: All right, objection is withdrawn.

By Mr. FitzGerald: Q. He did use a laborer?

A. Yes, sir.

Q. And he was operatin, —doing the exact work that Terry did, was he not?

A. In a different location, though.

Q. Well—

A. Yes, sir, the same type, that is right.

Q. On the same job Terry was working on when these men came there?

A. No, sir, he was four miles south of there working.

Q. Didn't he finish Terry's job?

A. No, sir.

Q. Who finished it?

A. That contract was let later on, and Sexauer—Longfellow finished that contract; but there was more added to it.

Q. Didn't the Gorham people finish that contract?

A. They took over the money part, sir. I mean, there was so much money left, and at that time there were places that had worse erosions still on the canal, and they finished that. They did it down there.

663 Q. But they also finished this particular job, didn't they?

A. No, sir. There was never another piece of equipment that went in there and worked.

Q. Wasn't it finished?

A. Later on, sir. Later on they let a big contract that took the whole west side of the levee—the east side of the levee, I mean. That was let to Longfellow and Sexauer, two different companies took that. They came in with six pieces of equipment.

Q. Did they use laborers on it?

A. On those six pieces they used two laborers.

Q. Those six pieces would do the same sort of work that was being done by Terry with two pieces that he had?

A. That is right, sir.

Q. Mr. Lehmann, when Mr. Terry came back to the car at the time that he got this gun that you are talking about, that you talked about, did he get in the car?

Mr. Alexander: Just a moment. We object to the statement "got this gun." I did not so understand it.

664 Mr. FitzGerald: Well, I beg your pardon. I did not mean to assume anything. I had understood that it was true.

The Court: Go ahead.

Mr. Alexander: That is not what the record said.

By Mr. FitzGerald: Q. What happened up there, Mr. Lehmann?

I understood him to say that he did get it from the car. What happened about the gun up in the car?

A. I saw Mr. Terry lean into the car, and when he walked away, I saw a gun butt out of his coat pocket.

Q. You don't know whether he got it out of the car at that time?

A. No, I couldn't. I didn't see him get it.

Q. Did you notice the gun in his pocket when he came up to the car?

A. Well, sir, I didn't pay much attention. He was facing me when he came up, I didn't see it, no, sir.

Q. Well, when did you see—when you did see it, did he turn away and walk away from the car?

665 A. His back was towards me walking back to the group where Mr. Green was.

Q. Yes, sir. Now he wasn't in the car when you saw the gun, he was on the levee itself?

A. Yes, sir, that is right.

Q. Mr. Lehmann, you are familiar with these contracts, are you not?

A. You mean—

Q. Contracts that Mr. Terry and the Midway Excavation Company had.

A. Yes, sir.

Q. Well now, those contracts are contracts between the Government and the contractor by which the Government agrees to pay so much an hour for operations of various machines, isn't that right?

A. That is true, sir.

Q. The Government has nothing to do with the number of employes that the contractor has to do that work with, is that not true?

A. That is true.

Q. One thing I forgot to ask you, Mr. Lehmann:

At the time that you first saw Mr. Green, when he was there with the deputies, was that after some or perhaps
666 most of the other men that you have referred to were already there?

A. No. As I recall it, they were still coming up. There was some there.

Q. There was some there, and others were still coming?

A. Yes, sir. The major part of them had not come at all.

Q. They had not come?

A. As I recall, no, sir, they hadn't gotten there.

Q. Well, Mr. Lehmann, you said you had Jack Green pointed out to you, as I remember. Was that upon other jobs on the levee?

A. Yes, sir, it was.

Q. Was that at places where laborers were employed?

A. No, sir. That was—in fact, I think the operator pointed him out.

Q. Sir?

A. The operators pointed him out to me, it was always the operators.

Q. Was it upon the Terry job or the Midway job?

A. It could have been on the Midway job, but earlier.

Q. I don't know about the time, but you think that was the first time you had ever known Mr. Green as far as being able to identify him as Jack Green?

667 A. I would say that the earliest I knew Mr. Green was—oh, two months before this happened. He was pointed out to me. And after that, I had passed him on the levee with my truck.

Q. Yes, sir. You don't know what he was doing out there at the time, do you, he didn't tell you?

A. I think I know what he was doing.

Q. You merely saw him out there?

A. Yes, sir, I think that is all.

Q. Probably trying to find out if there were laborers—

Mr. Alexander: We object. He says he doesn't know.

The Court: Well, if he doesn't know, he doesn't know.

Mr. FitzGerald: All-right, I think that is all, Mr. Lehmann.

Mr. Alexander: Just a moment, Mr. Lehmann.

Redirect Examination by Mr. Alexander.

Q. Mr. Lehmann, at the time on April 13, 1953, were any regulations governing parking along this levee road existing, were there any?

A. The Government has since, as most of the ramps coming up, not allowing trespassing, boating, and 668 swimming there, and they don't enforce it, but the signs were there, it is government property.

Q. Does that apply to all of the levee road and also the ramp?

A. No, sir. The ramps to the levee road. If you are

working in the vicinity, you can come up and park your car. The only thing they don't like is to get on the grass and tear it up because erosion starts right away. That is what they holler about mostly.

Mr. Alexander: I think that is all.

The Court: Call the next.

You may be excused.

Mr. FitzGerald: One question, please.

The Court: All right, Mr. Witness, one question.

Recross Examination by Mr. FitzGerald.

Q. Mr. Lehmann, do you remember whether or not the Midway Excavating Company finished their job, or did someone besides that company finish it, finish the job that they were on?

A. No, Midway did not finish their job.

Q. Who finished that?

669 A. No one, sir.

Q. It never was finished?

A. Sir, if they complete a certain percentage of their money, of their contract—

Q. Just answer my question, it never was finished?

A. It never was finished, no, sir.

Mr. FitzGerald: That is all.

Mr. Alexander: Just a moment, please.

Redirect Examination by Mr. Alexander.

Q. Was the erosion on that part of the levee that Mr. Wright was working on, was that eventually completed?

A. Yes, sir.

Q. But not by Mr. Wright?

A. No, sir.

Mr. FitzGerald: Is that all?

Mr. Alexander: That is all.

Recross Examination by Mr. FitzGerald.

Q. Well then, it was finished?

A. No, sir.

670 Wait a minute, I am getting confused now. I got you—no, I am wrong. I was thinking of Terry when you were talking about Wright. His work was—yes, sir, Wright's was finished, too, by the same company that finished Terry's.

Mr. Alexander: That is Sexauer?

The Witness: Yes, sir, Sexauer and Longfellow.

I made a mistake.

By Mr. FitzGerald:

Q. They are the ones who had the laborers?

Mr. Alexander: Two laborers for six pieces of equipment.

The Witness: That is right.

The Court: If that is all, call the next.

(Witness excused.)

Mr. Alexander: From Government's Exhibit 10, which has been identified previously as the official minute books of the meetings of Local 397 of Granite City, Illinois, we offer a portion of the minutes of a meeting held on April 9, 1953.

The Court: Any objection to it?

Mr. FitzGerald: None at all.

The Court: It may be admitted.

671 (Whereupon said portion of GOVERNMENT'S EXHIBIT 10 was received into evidence.)

Mr. FitzGerald: Which portion will now be read?

Mr. Alexander: Yes, sir.

"April 9, 1953.

"Regular meeting of Local 397 was held on this date. Following officers were present:

"President, E. Courtway;
Vice President, Dale Skeen;
Recording Secretary, E. Graft;
Business representative, J. Green;
Financial secretary-treasurer C. Parker;
Door guard, H. Breckenridge;
Sergeant-at-arms, C. Bricker.

Report of business representative, dispute on excavating job in vicinity of new canal, contractor operating equipment without laborers."

Mr. FitzGerald: Let me read that, please?

Mr. Alexander: Just one moment, I will glance 672 through this.

Mr. FitzGerald: Yes (document handed to counsel).

Mr. FitzGerald: No objection.

Mr. Alexander: I will ask leave to read from the same report, Exhibit 10, the minutes of the meeting for the local for May 14, 1953.

The Court: You may read it.

Mr. FitzGerald: May 14th, is it?

Mr. Alexander: Yes, May 14th, 1953.

"May 14, 1953, regular meeting of Local 397 was held on this day. The following officers were present:

President, E. Courtway;
Vice president, D. Skeen;
Business agent, J. Green;
Recording secretary, E. Graft;
Business representative, J. Green;
Financial secretary-treasurer, C. Parker;
Sergeant-at-arms, C. Bricker;
Door guard, H. Breckenridge.

Absent: B. Worthman.

673 "Report of business agent: Dispute on earth-moving job in canal area. Contractors Terry and Wright replaced by Gorham Company. Contractors Terry and Wright have moved equipment off job."

The Court: Call the next.

Mr. Alexander: Just a moment, your Honor.

We wish to offer Government's Exhibit 1, the plat.

The Court: Any objection?

Mr. FitzGerald: No objection, your Honor.

The Court: It may be admitted.

(Whereupon GOVERNMENT'S EXHIBIT 1 was received into evidence.)

Mr. Alexander: We offer Government's Exhibits 2 and 3, the Terry contract, Wright contract.

The Court: Is there any objection?

Mr. FitzGerald: No objection.

The Court: They may be admitted.

(Whereupon said GOVERNMENT'S EXHIBITS 2 and 3 were received into evidence.)

674 Mr. FitzGerald: Have you offered the rest, Mr. Alexander? Why don't you enumerate them so we know them?

Mr. Alexander: There are some of them we won't use.

Government's Exhibit 13 has been admitted, 13-A, 13-B, 13-C, 13-D have been admitted.

Government's Exhibits 14, 15 and 16 have been admitted.

Mr. O'Neill: I would appreciate it if you would enumerate the ones that have been admitted so we can check them all.

Mr. Alexander: I will give you a list of all of those that have been admitted in just a moment.

Now, there has been admitted:

Government's Exhibits 1, 2, 3, 4, 4-A, 5, 6, one paragraph from the constitution, Exhibit 7, was read to the jury; 8 has not been offered.

Mr. O'Neill: What is Government's Exhibit 8?

Mr. Alexander: That is the association agreement, Southern Builders.

675 Mr. FitzGerald: I thought that had been offered.

Mr. Alexander: No. Out of the minutes, Government's Exhibits 9 and 10, two excerpts have been read to the jury.

Government's Exhibit 11 has not been offered.

Government's Exhibit 12 is admitted.

Government's Exhibit 13 is admitted.

Government's Exhibits 13-A, 13-B, 13-C, 13-D are admitted.

Government's Exhibits 14, 15 and 16 are admitted.

Government's Exhibits 17 and 18 are admitted.

Mr. FitzGerald: You are not offering what now?

Mr. Alexander: I wonder if we might have a recess for a few moments, your Honor. We have two men that we want to talk to that we have not seen. They didn't come until ten.

The Court: We will take a recess. You may retire.

676 (Recess taken.)

The Court: All right, call the witness.

Did you want to question the former witness?

Mr. FitzGerald: I want to ask Mr. Lehmann a question. He was the last witness.

The Court: The last witness?

Mr. FitzGerald: Yes.

The Court: You desire to inquire?

Mr. Alexander: I wanted to ask a couple of questions, your Honor.

The Court: All right.

KARL LEHMANN, a witness heretofore called on behalf of the Government, and having been heretofore first duly sworn, resumed the stand, was examined and further testified as follows:

Redirect Examination by Mr. Alexander.

Q. Mr. Lehmann, I believe you testified that a Gorham Company finished part of this job?

A. They took over Terry's contract, yes, sir.

677 Q. And when did they begin that work, can you tell us? I can refer you to the records, if necessary.

A. My records would tell you exactly the date.

Q. I will hand you a group of what is apparently daily reports prepared by you, and will you please examine them and state when, if you can, when they started that work of finishing this contract?

A. These are all mixed up. I am going to have to separate them.

Q. I thought they were in order.

A. I see, they start from the back there.

Q. They start in the back.

A. March—they started on Thursday, the 23d of April, 1953.

Q. 23d of April?

A. Yes, sir.

Q. When did they complete it?

A. They completed it on the 21st of May, 1953.

I had better explain this, if you are going to use it. We always carry Terry Engineering as the contract, although Gorham did it from that date on.

Q. I see, you continued to carry that name "Terry" on.

678 A. He carried the money on it, he had to pay Gorham.

Mr. FitzGerald: When was the date it was completed?

A. 23d of May, 1953, if these are all of the records I have.

Mr. Alexander: At least they were working up until the 21st of May?

A. Yes, sir.

Q. From the 23d of April?

A. That is right, yes, sir.

Q. Now I think you have testified that there was one laborer employed on this by Gorham?

A. Yes, sir, he had one piece of equipment, one laborer with him.

Q. Do you remember this laborer?

A. I could identify him, yes, sir, I don't know his name.

Q. How old would you say he was?

A. Oh, he was about twenty- —twenty-one.

Q. What did he do out there?

A. Well, when he worked, he would help change the cable to the chain, the cable to the scoop, and he would help—one time the scoop—it was an old scoop, and the 679 dirt got wedged behind it somewhat—I never saw it happen before, but on this one it did and the boy had to dig it out, and outside of that, he didn't do—well, he didn't do anything.

Q. How long did that task of digging out that dirt from the scoop take?

A. Oh, about an hour and a half.

Q. How many days was he there?

A. Well, he was there until the contract was completed. Now, as far as I know, it was the same laborer until the contract was completed.

Q. Did you see anything else he did while he was there?

A. Well, he went fishing once.

Q. Now take the Sexauer Company, they completed some of that work?

A. They completed all, Sexauer and Longfellow.

Q. Did they employ laborers?

Mr. FitzGerald: I think he has answered it.

Mr. Alexander: Yes, I think he did.

The Witness: Two of them.

By Mr. Alexander:

Q. Two of them for how many pieces of equipment?

680 Mr. FitzGerald: Object, it has been gone over, it is repetitious.

The Witness: Six pieces.

Mr. Alexander: I think that is all.

Recross Examination by Mr. FitzGerald.

Q. Mr. Lehmann, I forgot to ask you this morning: Just about the time that you saw this gun in Mr. Terry's pocket, did he offer a gun to you?

A. That was before I saw the gun, Terry, that was before anybody came there, this is the first time I saw Terry after I left him from under the bridge. He came down under—from under the levee and he told me that there was going to be a picket line and asked me if I wanted a gun.

Q. That was before anybody came?

A. Yes, sir, that is, the deputies might have been up there, see, I was below the slope, I couldn't see.

Q. All right, there was no crowd around there?

A. No, sir, no crowd.

Q. Did you take it?

A. No, sir, I didn't take the gun, no, sir.

681 Q. At that time did you tell him that he was joking?

A. Well—

Q. I think we have a right to it.

The Court: He may answer.

The Witness: Yes, sir. I laughed and made a joke about it, and he kind of joked a little too then.

Mr. FitzGerald: I think that is all.

Mr. Alexander: Just one question:

Q. When the crowd was there, did you consider that a joke?

A. Oh, no, sir.

Mr. FitzGerald: I object to that. That is not cross examination.

The Court: Objection sustained.

By Mr. Alexander: Q. Did you know there was any such crowd coming out there when you joked with Terry?

A. No, sir, I did not know that there was such a crowd coming.

Re-Cross Examination by Mr. FitzGerald.

Q. Mr. Lehmann—

The Court: Are we through with this witness?

Mr. FitzGerald: I wanted to ask him something.

682 The Court: Are you through, Mr. Alexander?

Mr. Alexander: Yes, sir.

The Court: O. K.

By Mr. FitzGerald: Q. I understood Mr. Alexander was finished.

Mr. Lehmann, between the time that the Gorham had started there, the Gorham people, how many days did it rain between the 23rd of April and the 21st of May?

A. I will have to count them here. I will let you know in a minute.

Q. Yes. Will you, please?

A. Yes.

Four times, sir.

Q. Four days?

A. Four different times.

Mr. FitzGerald: I think that is all.

The Court: That is all?

Mr. Alexander: Did he answer that last?

The Court: Yes, four days.

By Mr. Alexander: Q. Did they work any of those days?

A. Yes, sir. You shut down until the shower was over, and then they worked some. I didn't check. They
683 may not have worked one or two of those days. It rained all day, but you can check it, it says in there.

Q. Immediately after it rained, in that soil was there any reason why they shouldn't work?

A. No, it was a sandy soil. It drained good.

The Court: Is that all?

By Mr. FitzGerald: Q. Mr. Lehmann, you weren't on this job of Terry's all of the time, were you?

A. You mean while he had it?

Q. While either Terry or the Gorham people had it?

A. Yes, sir, at that time that was the only job going, and I had to be there.

Q. You stayed there all day, did you?

A. Well, with the Gorham job I stayed there probably—practically all of the time. With Terry's, I would shift between Wright and him, but most of my time was with Terry.

Q. There were periods when the Gorham job was going on that you weren't there, were there not?

A. Oh, there could be, yes, sir.

Q. Well, is it a fact that there were?

A. Oh yes, sir, I might have made a phone call or something like that and wasn't there.

684 Q. When you were away from the job?

A. That is right.

Q. Did this fellow catch any fish?

The Court: Is that all of this witness?

Mr. Fitzgerald: That is all.

The Court: Call the next.

(Witness excused.)

685 HERBERT H. LYONS, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Alexander.

Q. What is your name, please?

A. Herbert H. Lyons.

Q. Where do you live, Mr. Lyons?

A. Edwardsville, Illinois.

Mr. FitzGerald: Is it Lyons, or Lyon?

The Witness: No, sir.

By Mr. Alexander: Q. How long have you lived there?

A. May of 1951.

Q. Will you speak a little louder so that the last juryman can hear you?

A. May of 1951.

Q. What is your occupation?

A. I am an accountant with the Dow Chemical Company.

Q. As such have you produced the records of that company which have been in your custody and control?

A. I have.

Q. What was the nature of the records you pro-

686 duced, Mr. Lyons?

A. Payroll records in the nature of time cards.

Q. Now will you examine the group of cards that I hand you and state whether or not they are payroll records of that company?

Mr. FitzGerald: What company is that?

Mr. Alexander: The Dow Company.

The Witness: These are actual payroll records of the Austin Company.

By Mr. Alexander: Q. Well, is the Austin Company affiliated in some way with the Dow Company?

A. No, there is no financial connection between the two companies. The Austin Company was a general co tractor for the Dow Chemical Company.

Q. For the Dow?

A. Right.

Q. And its time card records came into your custody?

A. The contract between the two companies was a cost-plus contract, and consequently their time cards or payroll records became our records at the completion of payment.

Q. And have been used in the settlement of your contract with the Austin Company?

A. That is right.

687 Q. Now were those records kept in the usual, regular and ordinary course of business of your company?

A. That is right.

Mr. Alexander: Unless counsel thinks it necessary, I didn't contemplate having it marked.

The Court: What is the purpose now?

Mr. Alexander: All I want to do is have the name of certain men employes to show they checked out on the 13th of April and checked in, and then I am going to offer another record to show the named person is and was then a member of the local union.

If you think we should mark those?

Mr. FitzGerald: I don't care anything about that. I don't see any necessity for offering the payroll records.

The Court: No.

Mr. Alexander: I just want to bring out certain details.

Mr. FitzGerald: I think you can ask him if he has refreshed his recollection from those records, which
688 he undoubtedly has had to, it is all right.

By Mr. Alexander: Q. You are familiar with the use of these particular records, are you not, Mr. Lyons?

A. Yes, sir.

Q. I will ask you whether this group of cards indicates that the employe named above checked out of the plant on the morning of April 13, 1953, and later in the day checked in?

The Court: I didn't hear you answer. Did they?

The Witness: Well, I looked at the top card. I haven't looked through the group of them.

The Court: Have you looked at them before now?

Mr. Alexander: Well, the check was made by another.

The Court: I was just trying to save time.

Mr. Alexander: Yes, I know. I think he can save time by just checking through.

The Witness: In each of these cases, the employe left the plant and returned on the day of April 13th.

The Court: Did they all leave about the same time?

689 The Witness: Within ten or fifteen minutes.

The Court: What time did they leave about?

The Witness: 9:30, I believe.

The Court: And returned about when?

A. About 11:30.

The Court: Does that cover it, gentlemen?

Mr. FitzGerald: Yes. I don't think Mr. Alexander heard. Did you hear that testimony?

Mr. Alexander: No, I did not.

The Court: They all checked out about 9:30 o'clock and all checked back in about 11:30, he said.

So does that cover what you want?

Mr. FitzGerald: Part of it.

Q. Will you state to the court the name of the employe whose record is maintained on that card?

Mr. FitzGerald: Why don't you ask him the names of all of them? That may save you time.

Mr. Alexander: It is a little difficult.

Mr. FitzGerald: Ask him to look at them and give you the names. It would save a lot of time, I think.

690 Mr. Alexander: I don't think it will.

The Court: Let's not kill time talking with one another.

The Witness: Clifford Stephens.

The Court: Hand him the next one.

Mr. FitzGerald: What was that name, please?

The Witness: Clifford Stephens.

Mr. Alexander: Now, if the Court please, from Exhibit No. 11 we wish to offer—that being the roll of members of Local Union 397, we wish to offer a record on page 3.

The Court: Any objection?

Mr. Alexander: Showing that card No. 81 in that local was held by Cliff Stevens.

The Court: Any objection?

Mr. FitzGerald: No objection.

The Court: It may be admitted.

Let's get along.

By Mr. Alexander: Q. Will you take these cards, the remainder of them, and read the names?

A. Dale Skeen.

Do you want them all?

The Court: Do you want them all?

691 Mr. Alexander: Just one at a time until we find this record.

The Court: Well, the record is in, is it not?

Mr. Alexander: We have not offered this record. I do not think that the whole of it is material. If counsel is willing to offer the whole of the record, well, we will take that and we will offer these cards.

Mr. FitzGerald: I do not want to encumber this record by books.

The Court: All right, you got the name. Let's go ahead. Is it in the record?

Mr. Oxtoby: Page 43 of Government's Exhibit No. 11.

The Witness: Carl Boner.

Mr. Oxtoby: Page 14 of Government's Exhibit No. 1.

The Witness: Clarence Baumeyer.

Mr. Oxtoby: Page 28.

The Witness: Herman V. Peters.

Mr. Oxtoby: I can't find it. Just a moment, please. Henry Peters is identified on page 32.

692 The Court: Read the next.

Mr. Alexander: We have another record to tie up with this. Will you read the address of Henry Peters on the record?

Mr. Oxtoby: 2712 Cuyuga Street, Granite City, Illinois.

The Court: Read the next.

The Witness: George Hayes.

Mr. Oxtoby: Page 18.

The Witness: H. Baldwin.

Mr. Oxtoby: Page 35.

The Court: Read the next.

The Witness: Anthony Mangiaracino.

Mr. Oxtoby: Identified in here as Tony Mangiaracino, page 38.

The Court: Just a moment. Do you object to this method of proof or anything of that sort?

Mr. FitzGerald: No.

The Court: Why don't you men sit down and agree that it is in the record, that these are the names?

We are just wearing the jury out, and me too.

693 Mr. Alexander: We have picked out those who are members from a great number, and if they are willing to say these are the members—

Mr. FitzGerald: Let me have the cards and look them over, and if they are and the number can be agreed upon, the number that is employed—

The Court: Are they all members?

Mr. O'Neill: Yes, your Honor.

The Court: Go ahead. What else?

Mr. FitzGerald: Nineteen persons whose cards have been presented it may be stipulated are members of the defendant union, Local No. 397.

The Court: Do you want to protect your record and read them to the reporter, the names on the cards?

Mr. Alexander: That is what I was going to say. If counsel is willing, we can make up a list and submit them.

Mr. O'Neill: Read them.

The Court: The reporter will take them if you want to read them.

694 Mr. Alexander: We will have him take the names during the recess.

Mr. FitzGerald: Are there nineteen cards there?

Mr. O'Neill: It may be stuck together. I thought perhaps it is too short, I don't know, they may be stuck together.

Mr. Alexander: What do you say, is it too short? Go ahead.

The Court: Is there anything else, gentlemen?

Mr. FitzGerald: I wanted to ask Mr. Lyons a question:

Q. Were these the names of all of the persons that your records disclose belonged to Union Local No. 397?

A. We would have no record of their affiliation with the local union.

Q. How did you check the cards? How did you get these names? Did someone tell you to check those names?

A. No, I have supplied the time cards for all laborers on the job on that day.

Q. You did not select these persons out at all?

A. No, sir.

Q. So far as you know, you don't know whether
695 these are members of Local 397, or your own knowledge?

A. Right.

Q. About how many laborers were there employed at the time the Austin people were doing the work there on April 13, 1953?

A. 149.

Q. 149 laborers?

A. Correct.

Q. Do you know who checked this group or some records, whatever that was, so that these particular cards were chosen?

A. I believe that was done by the office of the District Attorney.

Q. Do you know who in that office?

A. I can't say. I was not in the room.

Q. Who did it?

Mr. Stoddart: It was a bit of everybody—Granfield.

By Mr. FitzGerald: Q. Mr. Lyons, did you furnish the office of the District Attorney with all of the cards of laborers who worked there on that day?

A. That is right.

Q. And they then chose out these 19?

A. That is right.

696 Mr. FitzGerald: That is all.

The Court: Is there any further questions?

Redirect Examination by Mr. Alexander.

Q. Now those cards which you produced covering the labor force, did all of the labor force as evidenced by those cards who were present that day leave for a period of about two hours in the morning, leave the plant?

A. Not all.

Q. How many?

A. I cannot answer that. I know of one card that I happened to glance at where the man did not leave, but I did not examine the cards to determine that.

Q. Wasn't that a man by the name of—

The Court: Is there anything else of this witness?

Mr. FitzGerald: Nothing further. Pardon me, have they finished?

The Court: I don't know either.

Mr. Alexander: That is all.

The Court: Call the next.

(Witness excused.)

697 (The following are a list of the names on the cards as furnished by the witness):

Napoleon L. Parmley
William Gunn
Milton W. Anderson
Russell J. Gaddy
Anthony Mangiaracino
H. Baldwin
G. Hayes
Herman V. Peters
Clarence Baumeyer
Carl Boner
Dale Skeen
Clifford Stephens
Dan Savich
Clarence Freese
John E. Hinkle
Bernard A. Tretter
Homer Fields
Wm. R. Simmons
Merrill Lindsey.

The Court: All right, gentlemen, let's proceed.

698 CHARLES JOSEPH FOX, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Alexander.

Q. State your full name, sir.

A. Charles Joseph Fox.

Q. Where do you live, Mr. Fox?

A. Springfield, Illinois.

Q. What is your occupation?

A. Special Agent of the Federal Bureau of Investigation.

Q. How long have you been such?

A. As an Agent, four years.

Q. Did you this morning examine some payroll records of the Austin Company?

A. Yes, sir, I did.

Q. Did you approximate how many of those records were there, do you know?

A. Total number of Austin?

Q. If you know.

A. No, I don't know.

Q. You did not count them?

699 A. No, sir.

Q. Well, now, the cards that you have used, you got from Mr. Lyons?

A. Yes, sir.

Q. Did you check those cards with the roll of members of Local Union No. 397, being Government's Exhibit 11?

A. Yes, sir.

Q. And this group of cards I just handed to you, did you find records of those men in the roll?

A. Yes, sir.

Q. Some are not identical?

A. Exactly identical—

The Court: Well, isn't that admitted, gentlemen?

Mr. Alexander: I think it has been.

Mr. FitzGerald: Yes, I am not questioning that.

By Mr. Alexander: Q. And there were nineteen of them, were there not?

Mr. FitzGerald: He said he did not remember. Now, Marks, don't testify.

Mr. Alexander: He didn't remember the total number of cards.

700 The Court: There are nineteen. We can count them right here. You know that.

Mr. Alexander: Yes.

Mr. FitzGerald: Will you count them now?

The Witness: I will.

Mr. FitzGerald: I wish you would so we can find out whether Marks can count.

The Witness: Nineteen.

Mr. Alexander: I think that is all.

The Court: Any questions?

You are excused.

(Witness excused.)

The Court: Call the next.

Mr. Alexander: I think we are through, your Honor.

The Court: Does the Government rest?

Mr. Alexander: Yes, your Honor.

The Government here rested its case in chief.

The Court: Ladies and gentlemen of the jury, be back promptly at two o'clock, be in your jury room. You may be excused.

(Whereupon the jury retired from the court room.)

701 (The following proceedings were had out of the hearing and presence of the jury:)

Mr. Alexander: Is there any objection to those cards going in?

The Court: What was the understanding, that the reporter would copy the names that are on those cards?

Mr. Alexander: There are nineteen cards.

The Court: Are you ready to proceed at two o'clock this afternoon, Mr. FitzGerald?

Mr. FitzGerald: If the Court please, I did not expect the Government would be through this quickly. I think we will have witnesses here. We have notified a number of them to get here from Alton about a little before twelve o'clock.

The Court: Well, let's get along, if we can.

Have you any motions that you desire to offer at this time?

Mr. FitzGerald: Yes, sir, we have, your Honor.

The Court: I knew it would come. I thought we would get through with it now.

Mr. FitzGerald: I cannot do that right away. I want to look it over and see whether it is complete.

702 The Court: What?

Mr. FitzGerald: I want to look it over and see whether it is complete. I haven't conferred with able counsel who is the chief lawyer in this matter, Mr. O'Neill.

The Court: Can you be back at one-thirty today?

Mr. FitzGerald: I can't very well make it today. Two o'clock, your Honor. Give us time to look at it.

The Court: Do you promise not to make any extended arguments? That I must know.

Mr. FitzGerald: I never made an extended argument in my life.

The Court: You make it to me at two o'clock, and we will take care of it together with your witnesses.

Court will be recessed until two o'clock this afternoon.

(Whereupon these proceedings in the above-entitled cause were recessed until 2:00 o'clock p.m. of the same day, September 20, 1954.)

703 Court reconvened in the above-entitled cause at the hour of 2:00 o'clock p.m., September 20, 1954, pursuant to recess.

Present:

Same as before, to-wit:

Mr. Alexander, Mr. Oxtoby, and Mr. Stoddart, appeared on behalf of the Government;

Mr. O'Neill and Mr. FitzGerald, appeared on behalf of the defendants.

704 The Court: Now ladies and gentlemen, the evidence on the part of the plaintiff, that is, the Government of the United States, has been concluded. There is perhaps some evidence that may follow throughout the trial.

The defense now undertakes the defense of this case.

You may call the witness, gentlemen.

Whereupon the defendants, to maintain the issues in their behalf, offered and introduced the following evidence:

LOYD DALE SKEEN, called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. O'Neill.

Q. Will you please state your full name, sir?

A. Loyd Dale Skeen.

Q. Mr. Skeen, will you talk loud enough so the last gentleman at the end of the jury box can hear you.

705 It is a little hard to hear in this room.

A. Loyd Dale Skeen.

Q. That is S-k-e-e-n?

A. That is correct.

Q. Where do you live, Mr. Skeen?

A. Granite City, Illinois.

Q. And your address is what?

A. Well, it is 2414 Madison Avenue.

Q. Where did you live on or about the 13th of April, 1953?

A. I lived at 1709 Mitchell in Granite City, sir.

Q. Are you affiliated with Local 397?

A. I am.

Q. How long have you been a member of Local 397?

A. Oh, twenty, twenty-two years, I believe.

Q. Were you affiliated with them on the 13th of April, 1953?

A. Yes, sir.

Q. Do you hold any official position with the union?

A. Vice president.

Q. Were you vice president on the 13th of April?

A. Yes, sir.

Q. How long have you had that job?

A. About seven years.

706 Q. Is that a salaried job, or is it just honorary?

A. No salary.

Q. Were you working on the 13th of April?

A. Yes, sir.

Q. Where?

A. At the Austin Company at the Dow plant in Madison, Illinois.

Q. How long had you been working there then?

A. At that time, I guess close to three years, right then at that time.

Q. On the construction job for the Austin Company at Dow Chemical, is that right?

A. That is correct.

Q. What work were you doing there?

A. Well, personally I had charge of the tool room and the store room, that is the general store room. I done the

auditing of all supplies and repairs for equipment, and had the janitors and the office building. I believe that about covers my main duties.

Q. Well, then you were acting in a foreman's capacity?

A. That is right, foreman, and clerk too.

Q. Had you been acting in that foreman's capacity during the time of your employment there?

707 A. Yes, sir.

Q. Now under your union rules, I believe you also acted in another capacity on that job?

A. That is correct.

Q. What was that?

A. I was steward—job steward.

Q. Going back to your job as foreman, how many men would you say, approximately, worked under you?

A. Well, I had various numbers, sometimes—never more than twelve or fourteen, and sometimes not that many.

Q. And they were spotted around in the various departments that you have described?

A. That is right.

Q. Would you be able to tell the jury about how many men you had working under you on the 13th of April, 1953?

A. Well, I wouldn't—I would hazard a guess, that is all I can do. I don't know just how many was there. I would say ten or twelve that day.

Q. Now, what is the custom and practice and rules of the union as to the position of steward?

A. Well, you are there, the way I interpret it, to see that the men are, well, more or less to settle disputes 708 if they come up between two different crafts, it is my duty to get with the steward on the other craft and to try to settle it; and if we cannot, then we notify our business agent. That is one of the duties.

The other duty is to see the premises is kept clean and the men are treated like they should be, a place to dress

and undress, according to State Health laws, I believe, that is one of our duties, have raincoats and boots.

Q. Do you represent the men working under you, if there is a dispute between one of them as an employe and a representative of the employer, or the industry?

A. That is right.

Q. And you sit down and try to work those disputes out?

A. That is correct.

Q. Now did you know about the job up on the levee at the Chain of Rocks canal bridge?

A. Yes, sir, I did.

Mr. Stoddart: At what time?

Mr. O'Neill: I will get it in just a minute.

Mr. Alexander: Do you want the book?

Mr. O'Neill: Yes, if you please.

709 By Mr. O'Neill: Q. You were vice president of the Local 397 on the 9th of April, 1953?

A. Yes, sir.

Q. Handing you a book marked for identification Government's Exhibit—

Is that Government's Exhibit 11?

Mr. Stoddart: Look in the front, turn the first page.

Mr. FitzGerald: It is Government's Exhibit No. 10, I believe.

By Mr. O'Neill: Q. Government's Exhibit 10. Referring to a note on April 9, 1953, which is in evidence here, the name "Vice President, D. Skeen," tell me who that is?

A. That is me.

Q. Were you present at that meeting?

A. Yes, sir, evidently I was, if that book has got it.

Q. Well, will you just for your own information read the first three or four lines of the minutes of the meeting there? Don't read them out loud, just read them to refresh your own recollection.

Now if you were present at that meeting, was the defendant Jack Green there also?

710 A. Yes, sir.

Q. Do you recall any report that he made in connection with the job at the levee at that meeting?

A. He reported there were unfair contractors working out there, as well as I recall; of course, I see it on that book there, but he reported unfair contractors working out on the job and mentioned—

Q. Did he report the names of the contractors?

A. I believe—I am pretty sure that he did. I know he did: Terry and Wright.

Q. Was such a report by the business agent at the regular meeting of the local a usual and customary thing?

A. Yes; if there is anything wrong, he reports, you bet.

Q. Now under the ordinary custom and practice of the union, how was such a situation ordinarily adjusted?

A. Well, you mean when he makes a report that way?

Q. Yes.

A. Well, they receive a report, and his regular duty would be to go out there and try to settle it; and that is the way that we expect him to do.

Q. All right.

711 A. Negotiate with the contractor.

Q. That is the usual custom and practice in the union, is that right?

A. That is correct.

Q. Was that the first time that you had heard of any difficulty up along the levee there?

A. That meeting night, I believe that is the first that I heard of it, yes, sir.

Q. When was the next time that you had heard about the situation on the levee, Mr. Skeen?

A. Well, I presume that was the morning of the 13th, we might have talked about it at different times, but actu-

ally to know anything about it, that was on the morning of the 13th of April.

Q. On the meeting of April 9th, when he made the report that there was an unfair contractor, or there were unfair contractors operating on the levee, did he explain what the operation was that made them unfair?

A. That is right.

Q. What was that?

A. They were working without laborers, and doing our work without laborers, in other words.

Q. Tell the jury men and women what you mean by that.

712 A. Well, our jurisdictional work covers the cleaning of the "cat" tracks, taking—picking up of all debris, fueling, carrying water for the "cat," which has to be water put in it every so often, the hotter it is the more water they will carry, I know that; and there is numerous other duties there, carrying oil—

Q. If they were "cats" and bulldozers, would there be other duties in connection with cables and other operations?

A. Where they hooked onto other equipment, that is a duty to hook on and unhook, that is in our jurisdiction also.

Q. How about with reference to where a dozer was in operation and the business of spotting—where the operator were to move the dirt, and so forth—

A. Our laborers do that, they signal and spot, and set grades under an engineer's direction, of course.

They set the grade stakes, our men do that on the grade line.

Q. Now has there been in your experience in the union over the twenty years that you were a member other occasions when the question of whether or not there 713 should be laborers used in connection with the operation of heavy equipment come up?

A. Oh, there has, yes, sir.

Q. And it was usual and customary that the business agent would report that, and then go out and adjust it?

A. And go out and adjust the matter.

Q. All right. Now getting up to the 13th of April, on the morning of the 13th of April, where did you first go after you left home?

A. Well, I always go by the hall and pick up riders that didn't have no way to ride that were going down to our job, and I done that same thing that morning.

Q. About what time would you say that you got to the hall?

A. Well, it would be sometime after seven, I don't know just what time. It don't take me very long. I usually left the house at seven o'clock and I picked up a couple of riders, and then went on down to the hall.

Q. Well, when you got to the hall that morning, did you hear any discussion or anything said about the job out on the Chain of Rocks canal levee?

714 A. Yes, sir, I did.

Q. You don't recall who said that?

Mr. Alexander: We object to the leading form of the question.

Mr. O'Neill: I am sorry.

Q. Do you recall who said it?

A. I do.

Q. All right. Tell us.

A. Well, there were a group of men out there, and Mr. Green was there talking to them, and I walked up and he said, "Fellows," he said, "there is an unfair contractor out there on that levee. He hasn't left yet."

And well, I guess there was thirty, forty men there, I wouldn't make a guess, I would say thirty. And they were all out there, and we have a parking lot right beside of the hall, and that is where they were talking, and I didn't even drive in. I went on down to the work after.

Q. What is the location of the hall?

A. That is on Missouri Avenue and the railroad tracks.

Q. Is that in the city of Granite City?

A. That is right.

Q. And your union hall, you have a whole building?

715 A. We do have, yes, sir.

Q. And a large parking lot in connection with it?

A. A parking lot, yes, sir.

Q. You did not go into the hall, did you go into the parking lot?

A. No. I didn't go into the hall.

Q. You heard the discussion from where you drove up there?

A. That is correct.

Q. Did Jack Green say anything to you about going out to the levee at that time?

A. No, sir, he did not.

Q. What did you do at the hall then?

A. Well, I took the riders that I had and we went on down to work.

Q. That was down at the Dow Chemical Company?

A. That is correct.

Q. All right. Tell the jury then what happened when you got down to the Dow Chemical Company.

A. Well, of course I rang in as we always do. I went in. I had fellows ask me all the way down, which is quite a distance, I would say, oh, a couple of thousand feet from the place where I come into where I go down to my office, on down the way there they were asking me what I

716 was going to do because they had seen the crowd at the hall and they was talking about the trouble on the levee, about it being unfair towards our union out there, and I said, "Well, I don't know."

So I went on down to my office, that is which was the main store room, and I was down there probably fifteen, twenty minutes getting their work time.

And a Mr. Hayes came to me, one of our foremen, and says, "There is a crowd of men collecting up around the tool house talking."

He says, "There is an unfair job going on."

And he asked me what I was going to do about it.

I says, "I am going up to talk to them and I'm going up there when I get straightened around in the building here and get them opened."

I had a bunch of buildings to open to let the men get to work.

There were clerks from both Dow and Austin. It depended on me opening up their part of the building so they could go to work.

Q. Wait just a minute.

On the job down at the Dow Chemical Company, 717 were laborers employed from other locals besides Local 397?

A. Oh, yes.

Q. Were there laborers employed from Glen Carbon Local 474?

A. Yes, sir.

Q. From Staunton Local 815?

A. Yes.

Q. From Carlyle, Illinois, Local 581?

A. Yes, sir.

Q. From Wood River, Local 338?

A. Yes, sir.

Q. From Edwardsville, 179?

A. Yes, sir.

Q. From New Athens Local 743?

A. Yes, sir.

Q. From Greenville, Local 622?

A. Yes, sir.

Q. From Lenzburg, Local 599?

A. Yes, sir.

Q. From Ashley, Local 849, Ashley, Illinois?

A. I don't recognize that number, but they were from Ashley.

Q. Otis M. Stanfield, let me give you the name.

718 A. Yes, sir.

Q. From Sorrento, Local 633?

A. Yes.

Q. I will give you the name, Harold L. McCoy of Panama—if you don't know, it is O. K.

A. I don't know whether I do because some of them would write on their cards, they would not give their local number.

Q. From New Baden, 638?

A. Yes, sir.

Q. From Troy, Local 382?

A. Yes, sir.

Q. From Pocohontas, Local 677?

A. Yes, sir.

Q. You even had some from Calhoun County up there?

A. That is correct.

Q. From Hardin and Calhoun, Local 968?

A. Yes, sir.

Q. And one from Freeburg where Mr. Wright came from?

A. That is correct.

Q. Local 194?

A. Yes.

Q. And Trenton, Illinois, Local 946?

A. Yes, sir.

719 Q. From Marissa, Illinois, Local 598, Ripplemeyer?

A. Ripplemeyer? I don't recall the number.

Q. From Greenville, Illinois?

A. Yes, sir.

Q. That Local 622?

A. Yes, sir.

Q. And Marine, Illinois, Local 687?

A. Yes, sir.

Q. Girard, Illinois, Local 1145?

A. Well, I didn't know the number. We had them from that local.

Q. Paul Godesic, you didn't know him?

A. I don't recall him.

Q. And of course from Belleville and East St. Louis locals, and one from St. Louis locals, you recognize the members from there?

A. Yes, sir, I know, correct.

Q. So out of all of the men employed on the job, there were members from many, many locals around Illinois?

A. That is correct.

Q. Had there ever been any other discussion or plan or line of procedure laid out by Local 397 in connection 720 with this unfair job that was reported by Mr. Green on the 9th of April?

A. No, sir.

Q. Than his making the report?

A. No, sir.

Q. All right. Now getting back to the time that you got down to the plant at the Dow Chemical Company in Madison, Illinois, on the 13th of April, did you have some duties to perform that morning?

A. That is correct.

Q. Tell the jury what those duties were, the things you had to do to get your job under way.

A. Well, I had a tool house man in two different buildings that are quite a ways apart. I had to go and see if they had reported for work, get their slips from the day before business, taken them down to my office.

I had to go over to the main office, which is at the opposite end of the job, go down into the boiler room and see if the janitor was there and look at the desk to see if the night man had cleaned as he should on the upper floors.

And then I had to go back to my own place and see what repairs I had to get and any orders that were left there
721 for me to order certain stuff from different superintendents, or if there was any report of broken machinery that we repair.

Q. All right. During the time that you were doing those things, you were telling us when I interrupted you a minute ago, that there had been some discussion by the men about the job up on the levee.

A. That is correct, that there was lots of it.

Q. Will you tell the jury about that discussion, please?

A. Well, they came in and asked me, as I said, Mr. Hayes came over and told me there was a group of men discussing it up there. He thought I ought to go up and look up there to see what it was all about.

He went up there, I went up there. That is what they were talking about.

They said some men had came to the—were on their way up there, wanted to know what was going—what we was going to do about it.

Then I told the group that was there, Mr. Hayes too, that I was going up myself and see what was doing, what they were doing up there.

Q. By that you meant that you were going up and
722 see what who was doing?

A. That is correct. Well, see where these men were going out on that job, if they were going out on there.

I went to the hall. I didn't go out there first. I went to the hall.

Q. Did you tell anybody where you were going?

A. Oh, yes. I had told them where I was going, yes, sir.

Q. Did you tell any of them that they had to go with you?

A. No, sir, I did not.

Q. Did you have any communication between Jack Green and yourself from the time that you left the hall prior to the reporting to work and the time you left the job?

A. No, sir, I did not.

Q. All right. You left the job. Did you go by yourself?

A. No, I hauled, I believe either five or six, I don't recall how many were in there.

Q. In your car?

A. In my car, that is correct.

Q. Where did you go?

723 A. I went up to the hall.

Q. What did you find when you got up to the hall?

A. Well, there were a lot of men up there then, a good many more than there were that morning when I came by the first time.

Q. To go back just a minute to the job:

Was the discussion between yourself and various laborers on that job confined to members of Local 397?

A. Oh, no. I talked to—all of them asked me that question—the ones that worked for me as well as the others I met on my way out.

Q. Would you say generally they were the members of all of the locals, or a good many of the locals out there?

A. I would say so, yes.

Q. All right. When you got up there, you found a good many people.

Did you talk to Jack Green when you got up there then?

A. Well, no, I didn't personally talk to him.

I walked up and heard him talking to the men, and he turned to me then and he told me, "If you fellows are

724 going out there, don't start any trouble."

And then I left there and went on out myself.

Q. Did you leave there before Jack Green left?

A. Yes, sir, I did.

There was no room to park. My car was running at that time. My boy had drove it around and parked it again in the curb, and I went on right back, and two men I believe, or three, rode with me out there; but they were different ones than I brought up to the hall.

Q. Did your son do the driving for you?

A. Yes, sir, he did.

Q. Well, then you went up to the levee job?

A. That is right.

Q. How did you approach that levee job, from which end, or how?

A. Well, I guess that is the north end. After I got out there, I turned under the old viaduct, or the new viaduct, and drove south, that is the direction.

Q. When you say "the new viaduct," you mean under the bridge that goes over the canal?

A. Yes, sir, that is right.

725 Mr. O'Neill: Q. Can we have some of those pictures to talk about?

(Documents handed to counsel.)

By Mr. O'Neill: Q. I hand you a picture marked for identification Government's Exhibit 4 and Defendants' Exhibit 1, and ask you if you recognize that scene.

A. Yes, I do. I recognize that.

Q. That scene— Let's hold it like this, Dale, just a minute— That scene looks in what direction?

A. I am looking north now.

Q. And when you came to the levee job there that morning, where did you come along—is that road along the top of the levee there?

A. That is the road on top of the levee.

Q. Where did you come onto the scene of the levee there?

A. Well, I walked right through the weeds, where I

parked. I parked down further this way somewhere (indicating).

Q. Let me show you another picture.

This is an exhibit identified as Government's Exhibit 4-A and Defendants' Exhibit 1-A, which really hitches
726 together a little bit, and I ask you if that makes it easier to indicate where you came to.

A. I probably was down this way (indicating), oh, quite a bit farther. There was several cars along here (indicating) and I passed that road and went below the south of that road and parked.

Q. All right. Then where did you go?

A. Then I walked up the levee.

Q. Up the road and onto the levee?

A. That is right.

Q. What did you do—what did you see there?

A. Oh, there were men coming from different cars. I don't know how many. They were coming up the levee, some up the road, walking up the road.

Q. What did you see up on the levee?

A. I seen a car—I believe, and a bunch of men up there.

Q. Would you indicate by point for the jury there about where that car was sitting?

A. Well, I would think that it was right in there. I would not be positive. I would say right in around that bend somewhere where this road comes up.

Q. That would be indicating a spot on the road?

A. It could have been right along there (indicat-
727 ing), of course, I didn't come out there.

Q. But it is south of the bridge, isn't it?

A. That is right, it is south of the bridge.

Q. Was Jack Green there at the time that you got there?

A. Not when I got there, he wasn't. He came shortly after.

I started up the levee—I had the crippled fellow with me. I told them, "There ain't no use of you walking up there." I told my boy the same thing.

I said, "I will walk up and see what is running up there, see if there is anything running."

I walked upon the levee, and the equipment was stopped. It wasn't working, there wasn't anybody on it.

Q. Was the equipment upon the levee, Dale, or was it —again referring to the exhibits which you pointed out before—

A. Well, it was down, I would say back in here (indicating), and then down at the foot of that levee.

Q. Down at the foot of the levee?

A. Along the edge of the levee there.

728 Q. Which would be the west side of the east levee, would it?

A. That is right.

Q. You say that the equipment was not running at that time?

A. No, they weren't working.

Q. Was the operator still on it?

A. No, there was nobody on it.

Q. Not when you got there?

A. No, there was quite a few ahead of me.

Q. Would you make an estimate as to how many were there ahead of you when you got there?

A. I am not a good judge of just looking the men down how many, there might have been fifty, seventy-five or a hundred, or two hundred, I wouldn't know.

Q. Did others follow you out there?

A. I think a good part of my men followed me out there, you bet. Anywhere I would have went on a thing like that, if they had found it out, they would have followed.

Q. I see.

Well now, had you ever met or seen the contractor, A. W. Terry, Jr., before that time?

729 A. I never seen him that day.

Q. You didn't see him that day?

A. No, I never seen him enough to recognize him that day.

Q. Had you ever seen him before that day?

A. No, sir, I never had.

Q. And of course you haven't been in the court room here because you have been a witness, you have not seen him in court.

A. That is right. I have never been down here before.

Q. Would you know him if you met him now?

A. I don't believe I would.

Q. Well, when you got up on the top of the levee, what did you do, Dale?

A. Well, as I say, I stood on top of that levee and I looked down there, and there was no machinery running, and about that time I seen Mr. Green drive up.

Q. Do you know any of the law enforcement officials of Madison County?

A. Yes, sir.

Q. Whom do you know?

A. Well, I know Mr. Musso. I know Mr. Fricker. And I also know the sheriff himself, Mr. Callahan.

730 Q. You know Jimmie Callahan, the sheriff?

A. That is right.

Q. Did you see any of them that day there?

A. Yes, I did.

Q. Whom did you see?

A. Well, I believe at different times I might have seen both Fricker and Musso, and Callahan, I believe I seen them all that day.

Q. Did you get close to them?

A. No, I didn't get very close to them.

Q. Where were they in relation to where you were when you came up on the levee?

A. Well, at the time I came up on the levee, I wouldn't swear, they were standing there right then, but by the time I walked down after I seen there was no machinery operating, I started to walk down that way and I seen they were there and then Mr. Green drove up, pulled his car in there, and of course—

Q. By "pulling his car" in there, Dale, can you tell the jury about where he parked with reference to those roads that we have pointed out on the pictures there?

A. Well, I would say—

731 Q. Did he come up on the levee?

A. I believe he did, clear up on the levee, and I believe he was back—he came up from the other end of the levee, I believe. Now I wouldn't swear to that either, but I believe his car was just south of that crosswalk that I showed you that came up there.

Q. Did you see any other cars up on the levee?

A. Well, I seen that car that was setting up aside, ahead there that I told you before with those men around it, and I don't know who they were until, as I say, I seen it was the sheriff, and they were standing there.

Q. Did you know the sheriff's car?

A. No, I wouldn't know the make.

Q. There were several cars up there?

A. That is right.

Q. In addition to Mr. Green's?

A. That is right, several cars, they were there before he came up there.

Q. What did you do then, if anything?

A. Well, I would say we stood around there and waited until Mr. Green was talking to this man; and finally he

told us all to go back to our job, and we disappeared
732 and went back.

Q. Did he go on, pass you up the levee, to the other cars there?

A. He did. He was up there talking.

Q. Did you accompany him up there?

A. No, sir, I did not.

Q. Did you hear any of the conversation that took place up there?

A. No, sir, I never heard any conversation whatever there.

Q. Do you know what the membership of Local 397 was at that time, approximately?

A. No, I don't really know for sure.

Q. I will ask you whether in the people that you saw there, whether there were people other than members of Local 397?

A. Oh, yes, there were others, lots of them.

Q. Did you see anybody that you knew who was not a member of any laborers union, that you recall?

A. No, I don't recall, except— Yes, I will take it back. The sheriff and his deputies, I don't know that they don't belong to a local.

Q. You don't know whether Mr. Terry was up there or not, of your own knowledge?

733 A. No, to my knowledge I never seen the man up there until I met him before the grand jury.

Q. Did you see either of his bodyguards?

A. No, I didn't see those.

Q. Now did you yourself do anything else other than what you have told the jury about to persuade or otherwise cause the men to leave the job and go up to the levee with you that morning?

A. Nothing, but told them where I was going, except the ones that rode with me, they had to go with me. I

told them to come on because they didn't want to walk, and I didn't know whether I would come back right away or not.

Q. That was, if they wanted to go, they had to go with you?

A. That is right. I didn't force them.

Mr. Alexander: Object to the leading form of the question.

The Court: Read the question. I didn't get it myself. What is it?

(Question read.)

The Court: Yes, that may be stricken.

By Mr. O'Neill: Q. Will you tell the jury whether or not there were a lot of strangers there that morning
734 that you did not know at all?

A. Oh, yes, there were a lot of them that I didn't know their names and couldn't tell you who they were.

Q. Now, in addition to your duties as steward, that is, to represent the men in their conflicts with the employer and to see that they have a proper place to change clothes and those other things that you have enumerated, what other duties that you know of does the steward have in connection with jobs that he sees that are not operating fairly?

A. Well, he has the same right as any other member of the union, if he sees a job going unfair along the street that is doing work that is not done by our craft, he has a perfect right to go over and ask them to stop until he can contact the business agent, if they don't have a steward on that job. Any member of our local would do that, and has the right to do that.

Q. All right. After Jack told you all to go back to your job that morning, what happened, what did you do?

A. I went back. I got my fellows who was riding
735 with me, that rode out that morning with me, and we went back.

Q. What time did you report back there?

A. I wouldn't say just the time that I got back. I stopped and had a sandwich down in Madison, and some of the fellows had a bottle of beer before we went back to work.

Q. I see. Did you check out before you left the plant?

A. Yes, sir, we rang out.

Q. And checked back in when you came back?

A. That is right.

Q. Mr. Skeen, did you yourself see any violence out there that morning?

A. No, I did not.

Mr. O'Neill: Will you pardon me if I ask him one other question about your exhibit?

Q. I will hand you two pictures marked for identification Government's Exhibits 13-A and 13-D, and ask you if you could recognize the scene of that picture, about its location?

A. Well, I am assuming that this is the levee here (indicating).

Q. Yes.

736 A. On this side. Is that looking south?

Q. Looking north.

A. That is looking north?

Q. That was taken from the bridge.

A. Yes, I can picture that in my mind.

Q. Will you tell the jury that that approximately represented the way the cars looked that morning when you were there, or could you see up at that side of the bridge?

A. I couldn't. I never looked up there, and I couldn't see there. I don't suppose them were there when I first went, no.

Q. Look at this scene, Dale, and tell us if that picture—

A. That looks like where— No, I was farther down than

that, I was away down in here (indicating). These cars were not like that when I came in there, no.

Q. When you came in, but how about when you left, at the time you left?

A. Well, I didn't hurry because I am a pretty careful driver. I don't swing around traffic, and they were probably the big majority of them gone.

Q. That looked about like the cars were during the
737 time the men were there?

A. I never noticed that many cars.

Q. You did not?

A. No, I didn't. They might have been.

Cross-Examination by Mr. Alexander.

Q. Mr. Skeen, is Mitchell in the jurisdiction of Local 397?

A. That is Mitchell Street, sir?

Q. Mitchell Street in Granite City.

A. Yes, that is right.

Q. I see. I thought you meant Mitchell, Illinois.

A. No, sir. However, I can answer that question for you too, if you want me to. It is in our jurisdiction.

Q. It is in your jurisdiction?

A. That is correct?

Q. So that any laborer who lives in that particular territory in Mitchell or Granite City or that general area is eligible to be a member of Local 397, if he is eligible in other respects?

A. I presume so.

Q. In other words, you don't take in members who
738 live outside of your jurisdiction, do you?

A. Well, you posed a question there to me, I don't know.

Q. You don't know?

A. No.

Q. Now you have been a member of this local for some twenty-two or twenty-three years?

A. That is right.

Q. And you have been vice president for seven years, have you?

A. That is correct.

Q. How long did you work at the Dow Chemical Company?

A. Three years and a half, I believe, that is approximately.

Q. When you started in there, did you start in as a steward?

A. Yes, sir. I was among the first hired down there.

Q. Now, as I understand it, you were also a foreman, were you?

A. That is right.

Q. Now as a foreman, you had charge of a particular group of laborers working under your direction, is that right?

A. A specialized group.

739 Q. Yes, some sixteen or eighteen of them?

A. No, not that many. I said not over fourteen, but they were a specialized group of workers.

Q. But as steward you represented all of the members of your union who worked at the plant?

A. That is correct.

Q. And all other laborers who had work permits?

A. We didn't have any work permits that I knew of.

Q. You did not?

A. No.

Q. Well, do I understand that all who came under the classification at the Dow Chemical of laborer and who worked there such were members of your union?

A. Well, practically all, yes. My son wasn't, but he worked there.

Q. What is your son's name?

A. Michael Skeen, "Mike", we call him. His name is Loy Donald Skeen.

Q. Was he a member of Local 397?

A. No, sir, he was not.

Q. Did he live in Granite City?

A. He did. He lived with me.

Q. Under what arrangement was he permitted to work?

A. He is a disabled veteran, and we let them work,
740 or let him work without him paying any dues.

Q. Without dues?

A. In fact, we didn't know how long he could work when he started, or whether he could stand it or not.

Q. Had you been shop steward at any time at any other places of employment?

A. Oh, yes, I have.

Q. How long would you say altogether you acted as shop steward?

A. Oh, different times. Through the years, four or five years, or six years, I don't know just how long, on different jobs I would be steward.

Q. As a shop steward you are appointed by the business agent or representative, were you not?

A. Yes, sir.

Q. Mr. Green?

A. Yes, sir.

Q. How long had you known Mr. Green?

A. I would say thirty years, thirty-five.

Q. How long had he been the business agent of the union?

A. I believe it was around '38, '39, '36—I don't know when he did come in, to be honest.

741 Q. Now it was your duty as representative of this union at this plant to look after the welfare of the laborers at the Dow Chemical plant?

A. That is correct.

Q. And that covered some 186 men, did it not, 186?

A. 186?

Q. Something about 186, 189.

A. I have had it as high as 300 there at different times.

Q. At different times?

A. Yes, sir.

Q. Do you remember, weren't there approximately 189 working there on the 13th of April, 189?

A. I would say there wasn't over 150, if there was that many.

Q. That is just your best judgment at that time?

A. That is right.

Q. All of those men now came under your jurisdiction, did they not?

A. Well, jurisdiction, if they had any dispute they went into, I would in that way, yes.

Q. Well, suppose a laborer belonging to a local, say here in Quincy—

A. What?

742 Q. Went down and got a job down at Granite City, could he work?

A. He would have to see.

Q. He would have to get a work permit, would he not?

A. He goes through the business agent at the hall and he will put him out to work if we need the men.

Q. Well, isn't that what is known as a work permit?

A. Well, I don't call it that. They pay dues in our local.

Q. They pay dues to your local?

A. Yes.

Q. Under the constitution and under their permit, they are required to live up to all of the rules and regulations of your local, are they not?

A. That is right, in working ways, yes.

Q. And to live up to those rules they have to obey the orders of the business agent when those orders are within his power to give?

A. And reasonable.

Q. And reasonable, yes.

A. That is right.

Q. The same as members of your organization are required to do?

A. Yes. I would say to a certain extent.

743 Q. On that morning, did you report to any superior that you were leaving?

A. No, I did not report to any superior when I left, no, sir.

Q. You knew at least some of the men were leaving, didn't you?

A. Some of them left before me, some of them afterwards. Some of them when I told them I was going, they were faster than I was because I had to go clear back to the store room, lock the store room up before I left the office.

Q. That was when you met the janitor, Mr. Bauer, was it not?

A. I probably did. He worked for me.

Q. He worked for you?

A. That is correct.

Q. And you told him this, or this in substance, didn't you:

"Jack wants to see you down at the hall."?

A. No, I did not.

Q. You did not tell him that?

A. No, I did not.

Q. Did you tell anyone that?

A. No, sir, I did not.

744 Q. On that day?

A. No, sir.

Q. I will ask you whether or not you told that, or that in substance, to Walter Woodsworth.

A. That Jack wanted to see him down there? No.

Q. Either that, or that Jack Green wanted to see him down at the hall?

A. No, I did not.

Q. Or that there was going to be a meeting down at the hall that he should attend?

A. Well now, I don't recall whether I said, "There is a meeting" or not, but I do know—

Q. Did you tell anyone that there was going to be a meeting down at the hall?

A. I don't recall ever using the word.

Q. Was there going to be a meeting down in the hall?

A. No, sir, there wasn't.

Q. There wasn't. Then you wouldn't have any reason to say that?

A. That is what I say, I was going up there, though.

Q. Still you don't recall whether you did say that or not?

A. No, I don't recall. That has been a year ago, a long time.

745 Q. Do you know Fred Barron that worked out there?

A. Yes, he was right in the office with me.

Q. Did you tell Fred Barron in substance that Jack wanted to see the laborers down at the hall?

A. No, I didn't say that. I said I was going up to the hall to see Jack, that is correct.

Q. Did you tell them why you were going up?

A. No, I did not.

Q. Did you see Noble Smith there?

A. Yes, sir, he worked for me.

Q. Did you tell him in substance, or this, that you were all going up to the hall, that there was a meeting there and Jack wanted to see them?

A. No, I didn't tell them all of that. I told them I was going to go.

Q. William Barr you have already testified about?

A. Yes, sir.

Q. Do you know a man named Lindsey worked there on the labor force?

A. Yes, sir, I know him.

Q. Did you tell him in substance that Jack wanted to see him up at the hall?

A. I never even seen him that day, as I recall, he worked away from me, so I don't recall ever seeing
746 him.

Q. Do you remember how many of the laboring force at that plant under your jurisdiction went to the hall that evening?

A. No, I don't really know. There was quite a few of them went there, but I don't know how many went from that place.

Q. Wouldn't you say that substantially all of them went?

A. No, I wouldn't, because I don't know.

Q. You don't know?

A. That is right.

Q. Now going back in the years, hadn't this question of the employment of a laborer or a swamper on heavy equipment like caterpillars and diesels, tractors, been frequently discussed in your union?

A. Well, it has been discussed when a dispute arose, but it was always able to be settled by the business agent and the contractor.

Q. Well, wasn't it the position that Mr. Green wished to take and hadn't he taken it for a number of years that one of these pieces of equipment should always be accompanied by a laborer?

A. If it was necessary, yes, sir.

747 Q. Only if necessary?

A. Well, it is necessary where any of our work is.

Q. Did he not take the position that it was necessary in all cases that a laborer accompany the machine?

A. Well, I didn't know that. I know any case of it I never seen, it was necessary.

Q. Well, what cases do you remember seeing?

A. Well, the Chain of Rocks job or the locks job.

Q. That was a construction job, was it not?

A. Yes, that is right, and on grading of school yards and different things that I have seen them working on, grading yards.

Q. On construction work?

A. Yes, sometimes on construction, sometimes grading work.

Q. Did you ever know of another job such as this that was being performed on the levee where they were simply smoothing out little crevices in the levee?

Mr. FitzGerald: Object to that.

Mr. Alexander: I asked him if he ever knew of that.

Mr. FitzGerald: I don't think that is proper. He can answer.

The Witness: There was a job similar to that going
748 down the line there.

By Mr. Alexander: Q. Where, Mr. Wright's job?

A. No. I don't know whose it was, but there was a similar job going down the line and they had "cats."

Q. At the same time?

A. Yes.

Q. Well, you knew that job was stopped on March 26th, didn't you?

A. That job was running when we was out there that day.

Q. Aren't you thinking of the Masserman job that was a construction operation, rip-rapping?

A. Well, this was on the same side of the levee down further. It was doing work, and they had laborers with them.

Q. Did you go down to that job site?

A. I drove back there.

Q. Did you see what they were doing?

A. They were dragging dirt, pushing dirt with dozers. I didn't stop to look at it, but I seen they were there and I know there were laborers on it.

Mr. Stoddart: I can't hear that.

(Answer repeated.)

By Mr. Alexander: Q. Do you remember back in 749 1951 when there was a Pole construction job, the Joseph H. Pole Contractors, when Mr. Green took it up with him that he had to have a swamper on every machine?

A. I don't recall it, no, sir, I never worked with the Pole people.

Q. Well, you attended the union meetings, did you not?

A. Well, I presumably did, but I don't remember that.

Q. Well, didn't you discuss these matters in your union meeting?

A. Yes, but I didn't file them away to remember for three, four, five years.

Q. Well, what did Mr. Green report with reference to this trouble with these contractors on April 9th at that meeting?

A. He reported that they were out there working without laborers. That is essential.

Q. What required them to have laborers?

A. Well, as I have already testified here, this is—there is water to be put in those radiators, somebody has to get that.

Q. I realize that, but what was there that required them—is there any law they had to have laborers?

750 A. No, that is common practice with us.

Mr. FitzGerald: I object.

The Court: I didn't hear you.

The Witness: It is common practice.

Mr. FitzGerald: I object whether there was any law which requires it.

By Mr. Alexander: Q. It is a common practice for you to ask all operators of such equipment to put a laborer on each machine, isn't it?

A. We did because of the time they needed. Any time I have ever seen, they needed it, or they would do our work.

Q. They don't always need it, do they?

A. They would do our work. If we weren't there, they would do our work naturally. They would do our work if we needed it. We have an agreement with the contractors that our jurisdiction of work is covered by an agreement with the contractors.

Q. What contractors?

A. All of them practically around here except those two, I don't know about them.

Q. Well, contractors in what territory?

A. Well, I would say all of our territory around Granite City and probably all over Southern Illinois, I

751 don't know.

Q. Do you mean this agreement between Southern Illinois Builders Association and the International Hod Carriers?

A. That is right, the carriers, that is right.

Q. You say you have a provision in that contract covering this kind of labor?

A. All kinds of laborers, common labor.

Q. All right. Will you find where it covers the use of laborers that carry water?

A. I don't say it in that manner. In another way, it

does too. It also says water boys in there and men with their rigs.

Q. All right. Point to the provisions, just pick the provisions out.

A. To tell you the truth, I ain't got my reading glasses, I can't see. I left my reading glasses laying on the desk.

Mr. O'Neill: To what exhibit are you referring?

Mr. Alexander: Exhibit 8.

Mr. O'Neill: That is the one you didn't offer.

752 Mr. Alexander: That is the one we didn't offer.

By Mr. Alexander:

Q. Was there any talk at this meeting of getting the union operators of these machines to agree with you that they needed a laborer?

A. At what meeting?

Q. At this meeting on April 9th, or any previous meeting.

A. No. The business agent made his report and then he was going to contact the contractors and try to get it settled.

Q. How about contacting the union out of which these operators came?

A. He probably would have done that, I don't know.

Q. Now these men—these engineers who were union men were operating these machines without laborers, weren't they?

A. That is correct.

Q. Your union had no employes on either of these jobs, either the Wright job or the Terry job?

A. I guess we didn't, no. I am not sure that both of them were operators, union ones. I don't know that. I never went down and talked to either one of them.

753 Q. Now on the 13th of April you picked up some riders, and they accompanied you in your car to your place of employment, is that right?

A. That is right.

Q. Is that what you mean?

A. As I went to work in the morning, you are speaking of?

Q. Who were they you picked up?

A. I believe one of them was a fellow they called Mike Parmley. His name is Napoleon Parmley.

Q. Mike Parmley?

A. Mike Parmley.

Q. Is he a member of your union?

A. Yes, sir.

Q. Who else?

A. William Simmons.

Q. Is he a member of your union?

A. Yes, sir.

Q. Who else?

A. My son.

Q. You have already spoken about him.

A. I was enumerating for you.

Q. He bears the same name you do?

A. And then myself.

754 Q. And yourself.

A. And I don't know, but there was one or two others that rode up there with us, I wouldn't want to say who they are because I'm not sure. They didn't go any farther with me than the hall.

I may have had six in there or more, I know there was five of us.

Q. Now when you left to go to the hall, who accompanied you?

A. My son, Mr. Parmley, and myself. I don't think anybody else rode out there with me.

Q. How did Mr. Parmley happen to go along with you?

A. He is a cripple, very bad.

Q. Well, did you go get him, tell him that you would take him?

A. Did I go get him? He was with me when I went up to the hall.

Q. He was with you?

A. He never got out of the car, I don't suppose.

Q. How did he know that you were going to the hall?

A. I told him I was.

Q. Did you ask him to go along?

A. He had no other way of getting there if he didn't go with me or getting back either.

Q. Did he have to go?

A. Well, he would be down there by himself. He rode with me every day.

Q. You mean he would have been where by himself?

A. Down on the job in my office.

Q. He would be the only laborer left, wouldn't he?

A. In my office or in the tool room, he would be the only one left in the tool room because that was the only one there was in the tool room.

Q. And the tool room was left without anything?

A. No, he locked it up when he left.

Q. On the way up to work that morning you stopped to talk to Green?

A. That is correct.

Q. What did he tell you at that time?

A. He did not personally tell me anything. He was talking to a group of men.

Q. How many men?

A. Well, I believe I told you in the grand jury and here too, thirty, forty men wouldn't —I wouldn't make a guess. It could have been a hundred or it could have been thirty, I never counted them.

Q. Thirty or forty men. Now who do you remember seeing in that crowd of men that you knew?

A. Oh, I seen several.

Q. Well, just name some of them.

A. Well, I seen Mr. Green for one, and Mr. Paridade.

Q. Mr. Paridade, is he a member of your union?

A. That is right. I don't know. I might have told you more before the grand jury, but I don't recall them now, but I know I seen several of them there.

Q. Mr. Green. Now do you remember any others?

A. Well, there was some out-of-town men there, but I don't recall who they was. He was just—just was talking about that, and as I said, as I went down that morning there was a crowd there, we couldn't park in front.

Q. About what time was this?

A. We usually leave my home around seven, five minutes after seven, and I had to pick up this Mr. Simmons. Then I had to go down to another street down in Granite City and pick up another one, and it usually consumed fifteen minutes, probably, by the time I would get down there.

Q. Well, you would say it was sometime between seven and seven-thirty then that you were at the hall?

A. Sometime between seven and seven-thirty.

Q. And these men were there. Did any of these men 757 leave the hall, the premises?

A. At that time?

Q. At that time, that you saw?

A. Well, no. I didn't see anyone leaving there. They were all standing there, and setting in the cars, getting around working time, and there was quite a few men in there looking for work too.

Q. Men looking for work?

A. Yes, sir.

Q. Now you say that Green told you there and that group of men that there was unfair labor going on out on these job sites?

A. No. Well, there was unfair contractors out there without laborers, that is what it actually amounts to.

Q. Who was this Mr. Hayes you spoke of?

A. He is a member of our local.

Q. What is his full name?

A. George Hayes, I believe.

Q. What was his job out at the Dow plant?

A. He was foreman over a group of men.

Q. Did he go down to the hall?

A. Well, I am only going by hearsay. I don't recall seeing him go down there, but I presume that he did.

758 If I didn't see a man, I ain't going to tell you I did because I didn't see him. I presume that he did.

Q. Now you say it would be the duty of one of your members, or anyone working under the jurisdiction of your union, if he sees—

Mr. FitzGerald: I can't hear you, Mr. Alexander.

By Mr. Alexander: Q. (Continuing)—if he has knowledge of a situation of this kind, to request either the contractor or whoever is operating the machine to stop?

A. Well, yes, I would say any union man could ask a man to stop doing his work, that is correct.

Q. Certainly. Now he asked him to stop. Now what other duty in connection with that has he?

A. Well, he would report to his business agent that there was a job going on out there without a laborer on it.

Q. What if the operator doesn't stop?

A. Well, most any of them that I have ever asked did stop for me. I never had occasion to have one not stop when I asked him any more than we not stop when they asked us.

759 Q. Well now, the contractor in this case did not stop, that is the report that you got at the union, isn't that right?

A. That is correct, yes.

Q. And you got that report early on the morning of the 13th of April?

A. I got that report at meeting night that there was working going out there without laborers, and that morning when I come by, Mr. Green said, "They are still out there working without laborers," correct.

Q. Well now, on the 9th the report was, wasn't it, that the work had stopped on the 26th of March both on the Wright contract and the Terry contract, wasn't that it?

A. Well, I don't know about both of them.

Q. As far as you know, that work did not start up again until the 13th, did it, of April?

A. Well, I don't know. The 13th is when I heard of it the second time, yes, after he had negotiated—tried to negotiate, I presume.

Q. Did you know how Green knew that the work had started up again on the morning of the 13th?

A. No, I don't. I wasn't up there until after they 760 were working.

Q. Do you know a Mr. Courtway who is a member of your union, do you not?

A. I do.

Q. Did you see him at the hall that morning?

A. No, sir, I didn't.

Q. Did you see Mr. Carter, the financial secretary?

A. Mr. Parker, you mean?

Q. Parker, is it?

A. Yes. No, I did not see him that morning.

Q. Did you go in the building?

A. No, I wasn't in the building at that morning.

Q. Did you see Jack Green then go into the building?

A. No, I never seen him go in there, no, sir.

Q. How did you happen to want to go out on this job that morning?

A. Well, that is, union men all over town want to keep

things straight if they can. They hate to see an unfair job in the town as far as that goes, regardless of who it is.

Q. So they go out to the job, all of them?

A. Well, I don't know how many went out there, but it was a lot out there, quite a group out there.

Q. It was a very large crowd, wasn't it not?

761 A. It was a good group out there.

Q. Anywhere from 700 to 1250, wasn't there?

A. Well, I would say anywhere from 100 to three or four hundred would come near it, being my estimate of it.

Q. Your estimate?

A. I am no statistician, as I told you before. I don't know how to count.

Q. Do you know a Mr. Graft?

A. Graft?

Q. Yes, sir.

A. Yes, sir, I do.

Q. He was a member, was he not?

A. That is right.

Q. Did you see him there that morning?

A. No, I did not.

Q. How about Mr. Breckenridge, didn't you see him there?

A. Well, I don't recall. I don't suppose I did.

Q. How about Mr. Bricker?

A. No, I didn't see him.

Q. You did not see him?

A. I don't know if I seen him.

Q. Now when you got out on the site of this job on

762 April 13th, you went up on top of the levee?

A. That is right.

Q. When you first got there, what did you notice about this tractor outfit, if anything?

A. Well, when I first got there and walked up the

levee, as I said, the first thing I noticed was a group of men down by that car—by the cars.

Q. What car do you mean?

A. I don't know whose they are, they were automobiles. I never did walk down to see where they were at. They were automobiles, as I showed on that picture, north of that driveway that comes up to the levee, and I don't know whose they were.

Q. Where were they with reference to the levee road?

A. They were on top of the levee and they were south of the bridge, but north of where I came up on the levee.

Q. Well, weren't they on the slope down towards the canal?

A. No, they were right up on top of the levee.

Q. Right on top of the levee?

A. When I seen them, yes, right on top of the levee, yes.

Q. How many cars did you see there?

A. I believe there were two—I wouldn't—either
763 one or two, I don't really know for sure.

Q. Was one of them a truck?

A. Well, I don't know whether it w[illegible] or not.

Q. Did you see any men in those cars?

A. No, I never went up that close. I was quite a ways, as I told you before.

Q. Well, what did you see about the tractor outfit?

A. Well, I looked down there and there was nobody around it, so I came on towards it.

Q. There was nobody around?

A. There was nobody around near the tractor at that time.

Q. During that period of time did you see some man drive a truck carrying a tractor and pulling some other equipment by it go north on the levee road?

A. No, I don't recall.

Q. You don't recall seeing that?

A. No. I recall a truck coming up there, but I don't know what he was pulling. That was just before we left, and I know everybody got out of the way and let him by. I don't know, he had nothing in the truck.

Q. As a matter of fact, wasn't that truck stopped
764 by the crowd on the top of the levee?

A. No, I never seen it stopped.

Q. Stopped by men getting in front of it and in the rear of it?

A. No, not when I seen it, it wasn't stopped.

Q. After about four or five minutes, didn't some man come running along and say this, or this in substance, "Let that truck go through, it is a government vehicle!"?

A. No, I never heard a word.

Q. You didn't hear that?

A. No, sir, I didn't.

Q. Now you say the truck came after just about the time this crowd broke up?

A. No, about the time I was ready to leave, when you asked me where I was at when I was looking at the "cat", I walked up there and this truck came along and everybody got out of the way where I was at.

Q. Now that was about the time that you left, is that right?

A. That is right, it wasn't only a few minutes after that until Mr. Green told us to go back to work.

Q. To all go, just a few minutes?

A. That is right.

765 Q. Did you see any men after that go down and surround this tractor that was down on the slope of the levee?

A. Lord no, I never seen men go down and surround the tractor.

Q. Did you at any time see men surround that tractor?

A. No, I did not.

Mr. Alexander: That is all.

Mr. O'Neill: Just a minute, Dale.

Redirect Examination by Mr. O'Neill.

Q. In asking you about a truck, which he asked you if you saw the men stop for four or five minutes, I will ask you if you saw a truck pulling a big piece of equipment like a tractor, hauling a manure spreader behind it, did you see that there at all?

A. No, I did not.

Q. What kind of a truck was it?

A. It seemed to me like it was a sort of a pick-up truck, a light truck.

Q. A little pick-up truck?

A. Yes.

Q. That came along after all of this business was over, and Jack had told the men to go back to work?

766 A. Just about the time he told me—that I went down—just before he told me, this truck came along, but everybody got out of its way, I don't know whose it was.

Q. All right.

Now in response to one of Mr. Alexander's questions you said that we would stop if they asked us to.

What did you mean by that?

A. I mean if we was doing an engineer's work in there, and their steward would come up and tell me that my men were out there running a tractor or some thing, why, I would go out and tell them they mustn't do this, that it wasn't their work.

Q. Have there been occasions when laborers have operated tractors?

A. I don't know of any. I said, "if there was."

Q. Now Mr. Alexander asked you this, or this in substance:

Outsiders—by that he meant members of unions like the ones I recited to you a minute ago, other than Local 397—outsiders must live up to all of the rules of the local where they work; and you attempt to explain that,
767 but I didn't—but you did not get to explain it fully.

What do you mean by that?

A. Well, that is only as to our jurisdiction of work. In other words, they would have to do a day's work the same as our men do, work our way; that is, we wouldn't permit them just to sit around and loaf.

Q. Your union expects a man to do a day's work?

A. Do a day's work at any time regardless of whether he is an out-of-town local, or hometown man, or what it is.

Q. They don't participate in your meetings or in your election of officers?

A. No, they do not, no.

Q. Or in passing rules in the management of your local business?

A. Absolutely not.

Q. If you went over to work, for example, in the Pocohontas local on a project over there, would you be required to pay dues to the Pocohontas local?

A. I sure would.

Q. Have you done that with other locals where you have worked?

A. I have not personally, no. Other employes
768 of 397, when they have worked outside the jurisdiction, yes, we have had members work outside of our jurisdiction.

Q. In other words, that is a customary practice within all of the locals in the area?

A. I done it years, years ago at Alton.

Q. With reference to your being able to read that, you have only one good eye?

A. That is right, only one good eye. I don't happen

to be—to have my reading glasses with me. I left them on the dresser.

Q. When you came there that morning and Jack told you that there was an unfair job going on up the levee, did you know at that time that Terry, the contractor, had called Charlie Parker about seven o'clock and told him he was going up there and start working again?

A. No, I did not personally know that, because I wasn't in the hall.

Mr. O'Neill: I think that is all.

769 *Recross Examination by Mr. Alexander.*

Q. Mr. Skeen, your union is affiliated with the American Federation of Labor, isn't it?

A. That is correct.

Q. Now don't you know that it is one of the rules of the American Federation of Labor that is binding upon all of its affiliated local unions that in case of jurisdictional questions arising, there shall be no work stoppage, but the matter shall be referred to a committee in order to settle the difficulty?

A. Oh, that is an International rule.

Q. That is an International rule, isn't it?

A. That is right.

Q. And you are bound by it under your constitution and your affiliation with the American Federation of Labor, are you not?

A. Well, they don't permit you from stopping a job long enough to get your business agent.

Q. Get what?

A. Oh, to notify your business agent, they don't mean it in that way. A work stoppage—they mean tie it up, that is another question, but long enough for them
770 to negotiate the thing, the two business agents to get together.

Q. Well, suppose you asked a man to stop and he doesn't stop, what further should you do?

A. Go tell your business agent that you can't—he won't stop, that is all you can do; that is what you are going to do anyway, is to report to your business agent.

Q. Then he will take it up through the proper committees of the interested unions to make an effort to settle it?

A. Get a hold of the contractor, if it was on that.

Q. Get a hold of the contractor and try to get him to settle it?

A. Yes, sir.

Q. Doesn't the contractor have a right under all those rules and regulations to make the original decision as to whether or not he will continue to operate despite that request, and aren't his employes, even though union members, required by their own rules to continue their employment, isn't that a fact, Mr. Skeen?

A. I am not legally equipped to tell you that.

Mr. O'Neill: Is that all?

771 Mr. Alexander: No, it isn't.

Mr. O'Neill: I just want to know because I wanted to ask him a question also.

Mr. Alexander: You will get a chance.

The Court: Go ahead, let's get going, gentlemen.

By Mr. Alexander:

Q. Mr. Skeen, you said something about—as I gathered it—that it was the duty of the operator of this machine when requested to stop.

A. I don't know as it is his duty, but it is something that should be his duty anyway. That is the peaceable way of doing a thing, call the business agent and the two business agents get together and the contractor, that is the steward's duty to try to keep harmony on the job, if you are speaking of what a steward would do.

Q. In other words, he would try to induce the operator to discontinue his operations?

A. Until I could get it straightened out.

Q. One of the ways unions have of doing this is to place a picket around the job so that the operator of the machine will know that there is some kind of a controversy going on?

772 A. Well, yes. They don't necessarily have to know it—the operator doesn't have to know it, the contractor knows it too.

Q. If he doesn't know there is a controversy, why would he stop the—why would he stop operating the machine, isn't that your way of informing him?

A. Someone would have asked him, that is what we were talking about.

Q. Isn't that your way of informing the public and the men who are working on the job that there is a labor controversy?

A. Well, no, that isn't no set rule.

Q. Isn't that the purpose of picketing?

A. Well, a picket, yes, if you set up a direct picket line.

Q. If you set up a picket, now those pickets haven't any authority to go in and stop a man from working if he continues to work, have they?

Mr. FitzGerald: If the Court please, I cannot see how any of this is cross-examination.

Mr. Oxtoby: It is recross. You brought it out on redirect.

773 The Court: Go ahead, let's get along. Cut it down as much as you can. You are asking him a question at law, but go ahead.

By Mr. Alexander:

Q. As a matter of fact, your own union out at the plant wherever you are a steward, you crossed the picket

line of another union in a jurisdictional dispute, did you not?

A. Oh, yes, sir, we have, an illegal picket line.

Q. An illegal picket line?

A. That is correct.

Q. What was illegal about it?

A. Well, it wasn't called as it should have been called, for one thing, and I don't know the legality of that, but I do know it was an illegal picket line, and we had proof of it and it was put up on the sign.

Q. Well, if you say that you don't know about it, how can you say that it was an illegal picket line?

A. Well, I had the written stuff, but I am not technically enough educated in law to know that it is legal or illegal, but I do know it was considered an illegal picket line by the International, all of them, their own International.

774 Q. And every man at that plant who was a member of your union, or who was a permit worker under your union, who refused to cross that picket line at the direction of Mr. Green and yourself had his work permit taken away from him or was discharged from your union, wasn't he?

A. In the first place, there was no work permits.

Q. Just answer the question.

Mr. O'Neill: Let him answer the question that was asked.

The Court: What picket line are you talking about?

Mr. O'Neill: He is talking about another picket line. He is talking about another one. We know all about it.

Mr. Alexander: He says that a jurisdictional dispute that machines would stop operations.

The Court: He said they did.

Mr. Alexander: Now this is another labor dispute, hasn't anything to do with this. I am just trying to show

by this witness that their own union continues to operate even though there is a picket line.

The Court: Objection will be sustained. I don't
775 want to get into any more of that.

Mr. Stoddart: Was there an objection?

Mr. O'Neill: If it please the Court—

The Court: I don't know if you are making any objection or not, but I am objecting to it.

Go ahead, let's get this case going.

Mr. Alexander: I think that is all.

The Court: Is there anything else of this witness?

Mr. O'Neill: Just a minute, your Honor. I have one or two other questions of this witness in view of what Mr. Alexander has asked him on cross-examination.

Redirect Examination by Mr. O'Neill.

Q. Mr. Alexander asked you if it was not a fact that when a jurisdictional dispute arises that it is part of the rules of the International—various International unions affiliated with the American Federation of Labor that work shall not stop—shall not be stopped and shall continue, and in the event a dispute arises between two
776 crafts, the employer shall make a choice and assign the work to whichever union he thinks he ought to, that ought to have the work.

Now further than that, and as part of the requirement in making the assignment, the employer must notify in writing both unions that he has made an assignment to one or the other so that they in turn can appeal under this agreement to the International, and they arbitrate and settle the dispute.

Mr. Stoddart: Is that a question?

The Court: Objection sustained. Let's get along with this case. You and Mr. Alexander both are trying some

case way back in the distance that hasn't anything to do with this case at all.

I am going to try this case, the jury is going to decide, and then you fellows are just going to be satisfied.

Are you through with this one?

Call the next witness.

Mr. Alexander: We are through with him.

Mr. O'Neill: I am not, but you finished it.

777 The Court: We can be here for six months listening to what happened in the past.

(Witness excused.)

The Court: I think we will have a recess.

(Recess taken.)

The Court: Call the next witness.

778 ADOLPH HERMAN WILLIAM SEEBOLD, JR., called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. O'Neill.

Q. Will you state your full name, please?

A. Adolph Herman William Seebold, Jr.

Q. Where do you live?

A. 2301 Adams, Granite City, Illinois.

Q. Were you subpoenaed to testify as a witness in this case?

A. I don't know. I was just subpoenaed, I don't know who subpoenaed me.

Q. Well, if we did not subpoena you, the Government did.

Mr. Oxtoby: Object to that as irrelevant.

Mr. Alexander: Object to it as argumentative.

The Court: Yes. He is here.

Mr. Stoddart: The jury ought to be instructed to disregard that.

The Court: It does not ma' any difference as far as I can see who subpoenaed him.

779 He is here.

By Mr. O'Neill:

Q. What is your occupation?

A. I own Seebold Excavating Company and Seebold Equipment Rental Company, both of them are corporations.

Q. Is one of the companies which you own a company that uses and employs heavy excavating equipment?

A. Yes, the Equipment Rental Company.

Q. What is that company?

A. Well, it owns Hy-lifts and cranes and cherry pickers and front-end loaders some people call it.

Q. Bulldozers?

A. Don't own any bulldozers.

Q. Scoops?

A. No scoops.

Q. But heavy equipment, is that right?

A. Yes, heavy equipment. Two-yard Hy-lifts, one-yard Hy-lift, half-yard and ¾-yard cranes.

Q. Hy-lifts?

A. Yes.

Q. Where is that company's place of business, where do you operate out of?

A. 2301 Adams.

780 Q. In what city?

A. Granite City, Illinois.

Q. Is that what is known as the—

Mr. FitzGerald: Can you hear him?

A Juror: No.

Mr. FitzGerald: They cannot hear you, Mr. Seebold. Will you talk louder?

The Court: It is rather difficult to be heard in here. Will you speak loud enough so that last man way up in the corner can hear you? We will get along, I know it is difficult.

By Mr. O'Neill: Q. Are you a member of the Southern Illinois Builders Association?

A. No, sir.

Q. Do you operate in their territory?

A. Yes, sir, under all of their rules.

Q. And you operate under all of their rules?

A. Yes, sir.

Q. Now in connection with your operation of heavy equipment, do you use laborers as well as operators?

Mr. Oxtoby: Objection, unless it is limited to scoops and dozers.

The Court: I think he may answer whether he does or not. You can cross-examine.

781 Do you or do you not?

The Witness: We use both, operators, laborers and chauffeurs, we hire the three crafts.

By Mr. O'Neill: Q. What generally are the purposes for which you use laborers on your heavy equipment?

Mr. Alexander: To which we object unless it is limited to dozer and scoopers.

The Court: He has limited it to heavy equipment. Can't you limit it farther than that?

Mr. Alexander: He does not operate dozers or scoopers, he has already said.

Mr. O'Neill: I think I can limit it.

Q. Does some of the equipment you operate use caterpillar tracks?

A. All of mine are crawler International tractors.

Q. "Cats" tractors?

A. Yes, sir.

Q. Is that the same sort of equipment that is used with a scooper or a dozer?

A. My four Hy-lifts are called International TD-9 dozer shoyelers. They call them a dozer-shoveler. I have two drops and two Bucyrus-Erie dozer shovelers, that is the correct name for them.

782 Q. And those are the big "cats"?

A. Yes, sir.

Q. Do they use those "cats" also as dozers?

A. Yes, sir.

Q. And fo pull scoops or heavy earth-moving equipment?

A. No, you cannot pull scoops with them because they don't have the right attachments on them.

Q. Well, is the equipment generally the same?

A. Yes, sir.

Q. All right. Now in connection with those big "cats", do you employ laborers generally?

A. Yes, sir.

Mr. Alexander: We object, if the Court please. There is no evidence in this case of the operation of big "cats".

The Court: I think he may answer.

Mr. Alexander: In the instructions on this job—

The Court: He may answer. He said they were "cats", I heard him say that, didn't I, that were used on the job?

Mr. Alexander: I don't think so, they are dozers.

Mr. FitzGerald: Those are all caterpillars, most of them.

783 Mr. Alexander: He says they won't operate with scoops, they don't have the p oper attachments.

The Court: Read the question.

(Question and answer read.)

By Mr. O'Neill: Q. What are the duties that they perform?

Mr. Stoddart: Your Honor, I want to make an objection to this general line of questioning as to whether he employs laborers or not on this type of equipment as immaterial.

The Court: Objection is overruled. He may answer.

Mr. O'Neill: He has answered that one.

Q. What is the work that the laborer does in the operation of that equipment?

A. Well, we chiefly dig basements, and he squares the corners, puts up the strings, and when we backfill the house and grade the yard, we do not allow our machine to get within three feet of the basement, that is our insurance company rule, because they pushed in too many basements, so the laborer does all of the work of 784 shoveling the dirt that three feet.

Q. All right. What else does he do in connection with the equipment itself, does he clean the tracks?

Mr. Oxtoby: Object, suggestive and leading.

Mr. O'Neill: May I ask the question, please?

Q. (Continuing.) Carry fuel and water?

The Court: What does he do? You may answer what he does.

The Witness: Well, we in general, when the gas truck comes down to gas up the equipment, the laborer turns the gas pump to put the fuel into the tractor.

By Mr. O'Neill: Q. What else?

A. Just generally work around the machine; when they are loading trucks, he loads the truck and spots the truck, and just anything that comes around the work.

Q. In connection with the work of excavation, you say in the backfilling he does that. Does he do grading?

A. Yes, sir, grading the yard.

Q. Do you use laborer in that kind of work?

A. Yes, sir, always have a laborer to do the shovel-

ing around the house so we don't push in any founda-
785 tion.

Q. Does he do anything else besides shovel around the house?

Mr. Stoddart: Your Honor, again—I don't want to renew this objection all of the time, but it is certainly immaterial.

The Court: Objection sustained as to this. I don't think this has anything to do with grading out there.

By Mr. O'Neill: Q. Does he spot the place where the tractor should push the dirt?

Mr. Stoddart: Object unless he tells what type of job it is. I think it is immaterial in any respect, but unless he is going to make a similar type of work as in issue in this case.

The Court: Yes, I cannot see where this would have anything to do with it. I think you ought to confine it.

By Mr. O'Neill: In connection with grading, your Honor, there was grading done.

The Court: I think that is a quite different type of grading.

786 I will sustain the objection as to dirt-moving, as to that sort of work.

By Mr. O'Neill: Q. I will hand you an instrument marked for identification as Government's Exhibit 8.

Mr. Alexander: Government's Exhibit 8, that is right.

By Mr. O'Neill: Q. (Continuing.) And I will ask you if you have ever seen one of these?

A. Which part exactly?

Q. Have you ever seen one of these agreements?

A. Well, I let my Mr. English take care of all of the agreements.

Q. I see. You yourself do not know whether you have ever seen one or not?

A. No, I have never saw one.

Q. Well, when you told me a minute ago that you operated under the rules and regulations of the agreement between the Southern Illinois Builders Association and the International Hod Carriers Building and Common Laborers, was it this agreement that you were talking about?

A. Yes, sir.

Q. And by the rules did you mean that—what did you mean?

787 Mr. Stoddart: I object.

Mr. Oxtoby: He says that he has never seen that before.

The Court: It doesn't make any difference what he has seen.

Let's go on with the question and then we will see about the objection.

Mr. O'Neill: Sir?

The Court: Continue with your question. I don't know what your question is.

Mr. O'Neill: Yes, your Honor.

Q. With reference to the rules, do you know what the rule is with reference to the use of laborers on the job?

A. I know all of the rules, that is why I never saw the book.

Q. O.K., Mr. Seebold. What is that rule with reference to the use of laborers in heavy equipment?

Mr. Alexander: We object, it is not the best evidence.

The Court: Well, is it in the book?

Mr. Alexander: Well, let him.

The Court: The book is in evidence, is it not?

788 Mr. O'Neill: The book is not in evidence.

Mr. FitzGerald: They did not offer it.

Mr. Alexander: We did not offer it.

The Court: You can offer it. I don't think that is a proper way to prove it. Offer the book, and if it is proper,

why, you can read it. He says he knows the rules verbatim. That is about all you can ask him, I think.

Mr. O'Neill: Well, I cannot offer in this exhibit, your Honor, because he hasn't read it.

Mr. Oxtoby: Why don't you offer it into evidence? We won't object.

Mr. Stoddart: We will let you offer it, we will let it be admitted into evidence. We will do that.

Mr. O'Neill: One of you at a time, please.

Mr. Stoddart: You said he couldn't identify it. We agree it can be offered into evidence without his identification, and you can read the rule to the jury.

That is a fair shake.

789 Mr. O'Neill: Well, on the agreement by you that you are not going to object if I ask him if that is the rule or not.

Mr. Stoddart: If you read the rule—you read the rule.

Mr. O'Neill: What?

Mr. Alexander: Wait. Read it to the jury.

Mr. O'Neill: I will just wait until I get some one who can, it is a matter of strategy.

Cross-Examination by Mr. Alexander.

Q. How long have you been down in there in business?

A. My dad bought me a horse and wagon when I was six years old.

Q. Your first business was in the trucking line, wasn't it, more or less hauling?

A. That is right, in the trucking business.

Q. And then you developed into the construction business?

A. Well, I only worked for contractors in the construction business with the trucks.

Q. In the construction business?

790 A. That is right.

Q. Do you know Jack Green?

A. Yes, sir.

Q. How long have you known him?

A. About 22 years.

Q. And all of the laborers you employ and have employed for years at your plant are either members or permit workers in the jurisdiction of Mr. Green's union?

A. That is right.

Q. That is right, is it not?

A. We have four laborers working for us.

Q. How many pieces of equipment do you have?

A. We have approximately twenty.

Q. Approximately twenty?

A. Yes.

Mr. Alexander: I think that is all.

Redirect Examination by Mr. O'Neill.

Q. Now you say you have four laborers and forty pieces of equipment?

A. I said twenty pieces of equipment.

Q. How many laborers do you use in the operation of one piece of equipment?

791 Mr. Stoddart: Objected to as immaterial.

The Court: Oh no, he can answer that. Objection overruled.

Mr. Oxtoby: What kind of equipment?

The Witness: One laborer to each piece of equipment when it is working.

By Mr. O'Neill: Q. With each piece of equipment you use laborer, is that right?

A. We rent out, yes.

The Court: He has answered that.

Is that all of this witness?

By Mr. Alexander: Q. That work is construction work?

A. That is right.

Mr. Alexander: That is all.

The Court: Call the next.

(Whereupon an off-the-record discussion was had out of the hearing of the jury.)

The Court: Now ladies and gentlemen, we are going to be adjourned until tomorrow morning at ten o'clock. Be back promptly.

Remember the admonition of the court. We are just trying to get along with this lawsuit, but try to keep
792 your mind clear until it is finished. You may be excused.

(Whereupon the jury retired.)

The Court: Court will be adjourned until ten o'clock tomorrow morning.

(Whereupon these proceedings in the above-entitled cause were adjourned until the following day, September 21, 1954, at the hour of 10 o'clock a. m.)

793 Court reconvened in the above-entitled cause at the hour of 10:00 o'clock a. m., September 21, 1954, pursuant to adjournment.

Present:

Same as before, to-wit:

Mr. Alexander, Mr. Oxtoby, and Mr. Stoddart, appearing on behalf of the Government;

Mr. O'Neill and Mr. FitzGerald, appearing on behalf of the defendants.

794 The Court: You may call the witness.

JOSEPH F. KELLERMANN, called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. O'Neill:

Q. Will you state your name, please?

A. Joseph F. Kellermann.

Q. And your residence?

A. Edwardsville, Illinois.

Q. What is your occupation?

A. Chief deputy sheriff, Madison County.

Q. How long have you held that position?

A. With the exception of eight years, since 1933.

Q. Were you chief deputy sheriff on the 12th of April, 1953?

A. I was.

Q. That was a Sunday?

A. That is right.

Q. What occurred on that afternoon, Mr. Kellermann, that was unusual as far as a Sunday afternoon is

795 concerned?

A. It wasn't on a Sunday afternoon, it was on a Sunday morning.

Q. Was it? All right, what occurred?

A. On a Sunday morning I received a call from county jail stating that there was a man who would like to see me, and I made an appointment to meet him at the office; and I went down to the office and I met a Mr. Terry from Glenco, Missouri.

Q. Was he by himself?

A. No, no, he had two other gentlemen with him.

Q. Did you meet him at the Court House there in Edwardsville?

A. I met him at the entrance on Second Street.

Q. Did you go into the sheriff's office?

A. No, we stood right at the entrance and talked.

Q. What did he say to you, and what did you say to him?

A. He told me the purpose of his mission—he said he was a contractor and that he had a government job on the levee, and that he had been idle for some time; and he was forced to start the job, and he intended to start it the following Monday, and he said he anticipated
796 that he may have a labor dispute.

I asked him the nature of it, and he told me.

Q. What did he tell you?

A. He said that he was only operating one scoop or tractor, whatever it was, and that laborers were trying to force him to put a laborer on, and that his contract did not call for it; and he was going to start the job in the morning; and he said he didn't anticipate any trouble of any serious nature, he would like to have a deputy there, and I agreed to send a man out there.

Q. That was all you said to him, that you agreed to send a man out there?

A. That is right.

Q. With reference to the two men that he had with him, did he say anything to you, or did they say anything to you?

A. Well, he told me he had two men with him who were his personal bodyguards; and I asked him who they were, and he said they were two deputy constables from St. Louis.

And I told him that they would have no authority on the east side, and that was all that was said about
797 them.

Q. Did either of them or Terry tell you that—

Mr. Alexander: Just a moment, object to the form of the question, which is leading and suggestive.

Mr. O'Neill: You don't know what I was going to say, though, Mr. Alexander.

Mr. Alexander: I know from the form of the question.

The Court: Let's stop that.

Mr. Alexander: Ask him what was said.

The Court: Do you make an objection?

Read the question.

(Question read.)

The Court: I think that is leading or suggestive.

Mr. O'Neill: All right.

Q. Was anything said to you about firearms?

A. None whatever, no.

Q. Did any one of the three of them have any firearms on them at that time?

A. Not that I know of. I never searched them or anything, I couldn't say.

Q. What did you do after Terry told you he would
798 like to have a deputy down there?

A. I later on conferred with the sheriff, and after consulting him, why, I got in touch with the deputy in the

Tri-Cities, Mr. Fricker, and told him what and where the job was, and for he to be there in the morning.

Q. Had Terry told you where the job was?

A. He told me it was on the levee, yes, sir.

Q. Where at on the levee?

A. He told me it was just south of the new canal bridge.

Q. I see. Did anyone ask you for permission to carry firearms in that conversation?

A. No. No, they did not.

Q. Was that, to the best of your recollection, your full conversation with Terry and his two bodyguards?

A. Well, I never had any conversation with the bodyguards whatsoever.

Q. If a request had been made by Mr. Terry or the two constables, or deputy constables for permission to carry firearms, what would you have done?

Mr. Oxtoby: Object to the form of the question.

799 Mr. FitzGerald: We have a right to do that.

The Court: I can't hear both of you.

Mr. Oxtoby: Object to the form of the question, if the Court please.

The Court: Are you objecting? Which one of you is?

Mr. Alexander: Both of us.

The Court: That is what I am afraid of. If one of you confines yourself to the objection—

Mr. Alexander: We do object. It is immaterial, irrelevant to the issues, your Honor.

The Court: The objection is sustained.

Mr. FitzGerald: If the Court please, our position is that the carrying of these firearms by these men was an invitation to trouble.

The Court: I don't know anything about that. I'm not arguing that; it was what he would have done if they were asking for permission—

Mr. FitzGerald: They went to him for the purpose
800 of clearing it, and Mr. Terry's testimony is that he did give that.

Mr. Alexander: We object to the repetition.

The Court: Objection sustained.

Mr. Alexander: We object to that statement. We know your purpose.

The Court: Go ahead.

By Mr. O'Neill:

Q. What happened next, Mr. Kellermann? Was that all that happened?

A. That was about all of the conversation.

Q. Did anything unusual occur on Monday morning?

A. On Monday morning, I don't know the exact time, but I would judge it would be around about eight-thirty or so, I received a call from Mr. Fricker, our deputy, and he said that he thought that this was possibly more than he could handle, and he would like to have some additional men.

Q. Did he explain to you what he meant by this, that this was more than he could handle?

A. No. He said everything was peaceful now, but he would rather have some reinforcements.

Q. What did you do?

A. I called Deputy Musso, and I called Deputy Turner, and I told them to go down to this particular place.

Q. Was the sheriff in the office at that time?

801 A. The sheriff came in a few minutes later, and I told him, and the sheriff and myself went down.

Q. In whose car did you go?

A. Went down in my car.

Q. About what time was it that you left, and what time was it that you got there?

A. I will say it was close to nine, and it was—oh, it was maybe 9:15 or 9:30 when we arrived there.

Q. Where did you go?

A. We went to the spot south of the canal bridge of the levee.

Q. In order to reach that, you go from Edwardsville down what route?

A. We take 66 down to Mitchell.

Q. Is the canal bridge a part of 66?

A. That is right.

Q. As you came to the canal bridge, you of course left the highway.

A. That is right.

Q. Where did you go after you left the highway?

A. We took the road around to the right and came down to the road at the foot of the levee, and drove up as far as we could.

Q. Passed under the bridge?

802 A. That is right.

Q. All right. Did you drive up on the levee?

A. We drove up partly on the levee, yes, sir.

Q. Did you drive up as far as the road on the top of the levee?

A. That is right.

Q. I will show you for identification two pictures marked Government's Exhibit 4-A and Government Exhibit 4, Defendants' Exhibit 1-A and Defendants' Exhibit 1, which are a kind of composite picture.

You see this road here runs off into here (indicating).

Now would you just kindly indicate to the jury where you came from and where you went?

A. We came up this road here (indicating), and parked right along in here some place (indicating on photograph).

Q. And you are indicating there about the point where the road or ramp that leads up on the levee joins in with the road on the top of the levee?

A. Intersects the levee road, that is right.

Q. I see. Now as you came up there, what did you see?

A. There was—when we came up there, there was a car; in fact, there was—let me see, there was Mr.
803 Musso's car and Mr.—I presume it was Mr. Terry's car.

Q. Where were they, Mr. Kellermann? Would you point that out for the jury?

A. They were parked along right here, I would say one was right here at the intersection, and I think Mr. Musso's was back a little in there (indicating on photograph).

Q. Did you park in the front or where?

A. Behind, as I recall, I pulled to the right and stopped.

Q. That was to the right?

A. To the left of Musso and stopped.

Q. How far was the Terry car from where your car was parked?

A. It wasn't very far, maybe a distance of 15 or 20 feet.

Q. Did you see a piece of equipment operating anywhere around there?

A. Yes, sir.

Q. About where was it?

A. It was down alongside of the levee, down along here some place, I would say (indicating on photograph), see.

804 Q. You are pointing to a spot down on the lower left side of the picture, is that right?

A. That is right, it was left—it would be south of where we were parked.

Q. But it would be the part of the east levee, which faces the canal, or west side of the river—west side of the levee?

A. It was on the east side of the canal, yes, sir.

Q. Was the equipment operating at the time that you saw it?

A. Yes, sir.

Q. Now did you see any people there?

A. No, sir.

Q. Well, I mean did you see Mr. Terry or the two men?

A. I saw Mr. Terry.

Q. Did you see the two men that had been with him on Sunday?

A. Yes, sir.

Q. Where were they?

A. They were sitting in the car. Mr. Terry was standing outside of the car, and I think the two men were seated in the car.

Q. Where was George Musso?

A. He was in his car, and he got out and met us, 805 the sheriff and I, as we got there.

Q. Did you see Jack Fricker?

A. Jack got out with Mr. Musso and met us there, yes, sir.

Q. Then what happened?

A. Well, we stood around there for a few minutes, and there wasn't any trouble of any nature.

Q. Did either of you, or any of you talk to Mr. Terry, or what did Mr. Terry do?

A. I did not talk to Mr. Terry at all, no, sir.

Q. What did the sheriff do?

A. The sheriff talked to Mr. Terry.

Q. Did he get out of your car?

A. Yes, the sheriff got out of my car. We both got out of the car, yes, sir.

Q. Where would the sheriff and Mr. Terry talk?

A. Well, it was right at the rear of his automobile.

Q. At the rear of whose automobile?

A. Mr. Terry's automobile.

Q. You did not hear that conversation?

A. No, I didn't.

Q. What happened next?

A. Well, in a short time—I don't know how long—why, a crowd began to congregate.

806 Some men came and parked their automobiles down below the levee, and walked up towards the levee.

Q. Do you know where those cars came from?

A. No, I don't.

Q. Did they all come at one time, or did they just—

A. No, I would say they came gradually.

Q. Well, can you just try to tell the jury, as the thing developed, what you saw, what you heard, and what transpired?

A. Well, the men that came began to walk up on the levee, and the man, when he seen them on the top of the levee—was operating this caterpillar or scoop, whatever you want to call it—he got down and shut it off, got down off the levee and walked away. I don't know where he went to, and the rest of the crowd started walking down towards where we were, and I think about that time Mr. Green came along and the sheriff went up and talked to him.

Q. Was Mr. Green with the first men who arrived there?

A. No, I don't think he was.

I did not see him right away.

807 Q. Do you know Jack Green?

A. I know him, yes, sir.

Q. How long have you know ihm?

A. Oh, well, I have known Jack Green, I guess, ten years.

Q. Are you a personal acquaintance of his?

A. No, I just know him.

Q. You visited his house?

A. No, sir.

Q. Have you ever been to his union headquarters?

A. No, sir.

Q. You live in Edwardsville?

A. That is right.

Q. What happened as Jack Green came up the levee?

A. The sheriff met him, and he and the sheriff had a conversation.

Q. Were you present at that conversation?

A. No, I wasn't.

Q. How far away from them were you, Joe?

A. Oh, I would judge I was thirty feet, I was talking—

Q. What happened after the sheriff—

A. —I was back a little way. I was talking to a few boys from Edwardsville that came there. I was talking to them.

808 Q. Were they some of the men that had come up?

A. That is right.

Q. What did the sheriff do after he and Jack Green had the conversation, if you know?

A. After the sheriff talked to Green, he turned around and he went down and talked to Terry.

Q. Where had Terry been during that time?

A. He was still at the rear of his automobile.

Q. Did you see where George Musso—did you see where George Musso was at that time?

A. I think George Musso—I am not positive—I think he was in his automobile.

Q. Did you see how the bodyguards had disposed of themselves?

A. I didn't notice them in Mr. Terry's car. I think one of them was in the automobile with Mr. Musso. Where the other one was, I don't know.

Q. All right, you didn't hear the conversation between the sheriff and Mr. Terry then?

A. No, I didn't.

Q. What do you recall happened next, Joe?

A. The sheriff went down and talked to Mr. Terry. I didn't hear the conversation.

And they came back and Mr. Terry got in his auto-
809 mobile and left, and the crowd disappeared.

Q. Well, had anything happened, or what? Did Jack Green do anything between the time that the sheriff talked to Mr. Terry and the crowd began to disappear?

A. Do anything? What do you mean?

Q. Well, I will just ask you what he did do, Joe, that you observed, if you saw anything.

A. I didn't observe him do anything.

Q. Did you see him go up to Terry's car?

Mr. Alexander: We object to the form of the question. He said he didn't see him do anything.

The Court: Well, he can answer that, whether he saw him go to the car or not.

The Witness: I think he walked down towards Mr. Terry's car, yes.

By Mr. O'Neill:

Q. Did you hear him say anything?

A. No, I did not.

Q. Or see him do anything?

A. No, I didn't.

Q. Did you observe anybody in the crowd swinging at Terry?

A. No, I never seen any violence of any kind.

810 Q. Did you hear any threats?

A. No, I didn't.

Q. Well, what was the conversation that you had with the man that you knew from Edwardsville who had come up there?

A. I asked them what they were doing there.

Q. Yes. Did anybody in particular—was it anybody in particular that you knew?

A. Yes, I knew who I was talking to, yes.

Q. Well, whom did you talk to?

A. I talked to Freddy Behrendt, one man from Edwardsville. And I talked to another man by the name of Provoznik, that I knew from Edwardsville. I think it is spelled P-r-o-v-o-z-n-i-k.

Q. Did either of those men make any threats to Mr. Terry or his bodyguards?

A. No, they weren't near Mr. Terry.

Q. Now when Mr. Green went up to Terry's car, what happened?

A. Well, I—what happened?

Q. Yes, sir.

A. Well, Jack and Mr. Terry evidently had a conversation of some kind, I don't know what it was. I never heard it and, like I say, Mr. Terry got in his auto-
811 mobile and left, and the rest of the fellows were disappearing.

Mr. O'Neill: You may cross-examine.

Cross-Examination by Mr. Alexander.

Q. Can you tell me how you spell the name of that man you talked to?

A. I think it is B-e-h-r-e-n-d-t.

Q. What is his occupation?

A. Well, I really don't know. I think that he is a laborer, I am not positive about that, although I have heard just in the past week that he is going to be superintendent of streets in Edwardsville.

Q. Not what he is going to be—be superintendent of streets down where?

A. At Edwardsville. I understand he was appointed the past week.

Q. So that at that time he was a laborer?

A. Well, I presume he was. I don't know. I don't know just what his occupation was.

Q. How about this man Provoznik, where does he live?

A. Where does he live? In and around Edwardsville.

Q. What was his business?

812 A. I think he is a laborer.

Q. Whom else did you see that you knew there in this crowd other than the other deputy and Mr. Terry and his bodyguards?

A. Well, I think that is about all that I knew of the crowd.

Q. The only ones that you knew?

A. The only ones I recognized.

Q. You have been a deputy sheriff in that county since about 1933, except for eight years?

A. That is right.

Q. What did you do during that eight-year period?

A. For the years I was deputy county treasurer.

Q. Now your duties as deputy take you throughout the county?

A. Not too much so. I am confined in the office more than I am around in the county.

Q. But you are well known all over the county, are you not? You know a lot of people in the county?

A. I imagine so, I have lived there all my life.

Q. How many sheriffs have you served under down in Madison County?

A. Well, let me see: I started in with Mr. Fitzgerald in 1933, served through with Mr. Henry, served with
813 Mr. Hartman, and at the present time serving with Mr. Callahan.

Q. Now did anyone go with you to the scene this morning?

A. I stated the sheriff went with me.

Q. That is what I wanted to clarify.

How far did you park your car away from where Terry was?

A. Well, I think I said about 30 feet.

Q. You got out of your car?

A. Yes, sir.

Q. Where did you go?

A. When I first got there—You mean when I went—

Q. Yes.

A. I walked down the levee a short distance.

Q. In what direction down there?

A. I would say down towards where the man was operating the scoop.

Q. You saw him operating that scoop?

A. Yes, sir.

Q. Did the sheriff go with you?

A. No, I think I walked by myself, I think.

Q. Did you see the two bodyguards there?

A. I seen the two men sitting in the car when we
814 drove up, yes, sir, and then later on I saw the one in Mr. Musso's car and the other one I didn't see any more after the men got there. I didn't notice where he was at.

Q. Then the crowd began to congregate?

A. Yes, in a short time, I will say possibly fifteen to thirty minutes after we were there, I guess closer to fifteen than thirty.

Q. By the way, during this period did you see a government truck go by hauling, with a tractor on top of it and hauling a manure spreader?

A. On the levee road?

Q. Yes.

A. No, I didn't.

Q. You didn't see that?

A. No, not on the levee road.

Q. Well, on the other road that goes down under the bridge?

A. I didn't notice any truck go by with any spreader, you say on it?

Q. Yes.

A. No, I didn't.

Q. Hauling an equipment?

A. No, I didn't.

815 Q. Did you see such equipment—Well, I will withdraw that for a moment.

Now you say when the crowd began to assemble, the operator of the machine just got down and came up and joined the crowd?

A. Well, I don't know whether he joined the crowd or whether he got into his automobile and left, but anyhow, I didn't see him any more.

Q. In other words, what you saw was everything was peaceful and quiet except that there was a crowd around?

A. That is right.

Q. There wasn't any disturbance of any kind?

A. I never seen any of any kind, no, sir.

Q. You didn't see anybody run down and surround the machine that was being operated by the engineer?

A. There were some men walked down there afterwards—after the man was off the tractor—and had walked away—there were some men went down there.

Q. How many?

A. Oh, I don't know, possibly twenty or thirty.

Q. Did they remain there?

A. You mean at the tractor, at the scoop, rather?

816 Q. Yes.

A. Well, they didn't remain there very long, no, they were congregated around it, I noticed them down there.

Q. You didn't remain with the sheriff?

A. No, no.

Q. You didn't remain with the two deputies?

A. No.

Q. You didn't hear any of the conversation between Green and Terry?

A. I didn't hear any of the conversation between Green and Terry, nor did I hear any of the conversation between the sheriff and Green and Terry.

Q. When you saw Green go down towards Terry, how far were you from Terry?

A. Oh, I will say thirty feet.

Q. How many deputies at that time did the sheriff have?

A. You mean regular paid deputies?

Q. Yes.

A. We have five on day and five on night.

Q. Who was left at the Court House in Edwardsville, anyone on duty?

A. No.

817 Q. How far is it from the site of this job to Edwardville?

A. Well, Mitchell is 12—I will just judge fifteen miles.

Q. Fifteen miles?

A. Yes.

Mr. Alexander: I think that is all.

Redirect Examination by Mr. O'Neill.

Q. Mr. Kellermann, when you say you were about thirty feet away when Jack Green was talking to Mr. Terry, was there anybody between you and them?

A. Yes, some of the rest of the crowd was there in between us.

Q. How much of a crowd was around there, would you say?

A. Well, I don't know, they were congregated in there,

I will say there were possibly, oh, maybe forty, fifty, forty or fifty men congregated around there.

Q. Between you and where Mr. Terry was talking?

A. That is right, it was terribly windy that morn-
818 ing, you couldn't hardly hold your hat on your head.

Q. I see. How many people would you estimate were there altogether, if you know?

A. Well, this is an estimate: I would say there were in the neighborhood of 500.

Q. Were they all jammed up around the cars, or were they spread all over the territory?

A. Well, they were pretty much spread around. There were some around the cars and some down along the levee. In fact, I think some had not even gotten up to the levee yet from their cars.

Recross Examination by Mr. Alexander.

Q. Did you make any report of this occurrence?

A. Did I make a report of it?

Q. Yes.

A. In the office, yes, sir.

Q. A written report?

A. A written report? Sure we have it in the office, the sheriff and I consolidated one, he has it, rather.

Q. That report would be in the office?

A. It is in the office, yes, sir, unless the sheriff
819 has brought it with him. I don't know whether he has or not. I could not say.

Q. When was the report made with respect to the date of the incident?

A. Well, I think it was possibly made the next day, or maybe the same day.

Q. Now as I understand it, you are unable to identify any other men in that crowd?

A. Well, I didn't identify any that morning other than

these two who just came walking by, and I knew those two and I spoke to them.

Q. You saw no one else whom you knew?

Mr. FitzGerald: If the Court please, I don't think that is even a fair question.

The Court: Well, it is repetitious. He said he didn't.

By Mr. Alexander: He can say whether he did.

Q. Do you remember seeing anyone else that you knew other than those you have named heretofore?

Mr. FitzGerald: Objection, if the Court please.

The Court: He may answer.

The Witness: I don't recall seeing anybody else I knew other than those two. They came right by me. There
820 was quite a crowd there. I don't recall seeing anybody else whom I recognized.

Mr. Alexander: I think that is all.

Mr. O'Neill: That is all, your Honor.

The Court: Call the next.

By Mr. O'Neill: Just a minute!

Q. Was the report Mr. Alexander has been talking about the one that Mr. Callahan took before the grand jury when they subpoenaed him before there?

A. That is correct.

The Court: Call the next.

(Witness excused.)

821 JAMES D. CALLAHAN, called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. O'Neill.

Q. What is your name, please?

A. James D. Callahan.

Q. You are the sheriff of Madison County, Illinois, are you?

A. Yes, sir.

Q. How long have you held that position?

A. Since December of 1950.

Q. Prior to that time, what position did you hold?

A. Auditor of Madison County.

Q. County auditor?

A. Yes, sir.

Q. For how many years?

A. Twenty years, five terms; in the middle of the last term, why, I ran for sheriff, eighteen years.

Q. Were you sheriff of Madison County on the 13th of April, 1953?

822 A. Yes, sir.

Q. About what time did you come to your office that morning?

A. About nine-thirty.

Q. Who was in charge of the sheriff's office—I mean the office work.

A. Joe Kellermann, the chief deputy.

Q. Now where do you live?

A. At Alton.

Q. Do you travel back and forth between Alton and Edwardsville?

A. That is right.

Q. About how far apart are those two cities?

A. I would say about eighteen or nineteen miles.

Q. Will you talk loud enough so all of the gentlemen of the jury can hear you, and the ladies can hear you, as it is a little bit difficult for me.

A. All right.

Q. As you came to your office on the morning of Monday, April 13th, did you—did anything occur that was out of the ordinary?

A. Well, when I arrived at the office at nine-thirty that morning, the chief deputy told me that there was a labor

dispute down on the Chain of Rocks Canal; and that
823 he had dispatched three deputies down there, involving Mr. Terry, contractor, and Jack Green's local down there.

So I suggested that we go down right away and put one of the other deputies in charge of the office, and that is what we done.

Q. Whose car did you go down in?

A. Kellermann's car.

Q. Did he drive?

A. He drove, yes.

Q. What route did you take down to the levee?

A. Well, we went straight right down to Mitchell, and then over to the Chain of Rocks canal—Chain of Rocks bridge.

Q. Did you go down U. S. 66?

A. Yes.

Q. Chain of Rocks bridge is a part of United States 66?

A. Yes.

Q. When you got down to the levee, where did you drive to?

A. Well, we drove into the Chain of Rocks canal there on the levee.

Q. Did you drive up on the levee?

824 A. Along the slope where a fellow was operating a caterpillar.

Q. Did you drive up on the levee?

A. Yes.

Q. Well, when you first got there, whom did you see there?

A. Well, when we first got there, it was just the three deputies and the contractor Terry, two officers and the man driving the caterpillar.

Q. By two officers, whom do you mean?

A. Well, they were with Mr. Terry, two fellows from Missouri.

Q. Did you know them?

A. I did not.

Q. Did you meet them?

A. Well, that particular morning I met them, yes.

Q. What did you do when you got there?

A. Well, I got out of the car and I walked up on the slope, met my deputies, and about that time—well, shortly after that a bunch of laborers, people, came from all sections.

Q. Did you see the defendant Jack Green there?

A. Yes, sir.

Q. Was Jack with the first bunch that came?

825 A. No. There was quite a bunch came, and then later Green came, I would say maybe ten minutes later.

Q. Do you know Jack Green?

A. Yes, sir.

Q. How long have you known him?

A. Well, I have known Jack for a number of years as an acquaintance, is all. I have never been really personally acquainted with Jack Green or had any dealings with him.

Q. Have you ever been to his house?

A. Never, no, sir.

Q. Have you ever been to the office, or the headquarters or hall of the common laborers union in Granite City?

A. No, sir.

Q. You say you saw the man Terry, Mr. Terry?

A. Yes, sir.

Q. Did you have any conversation with him?

A. Not when I first went down there. My conversation was with Mr. Terry, followed a conversation I had with Mr. Green.

Q. Well, was that the first conversation that you had when you got down there, your talk with your deputies?

826 A. Yes.

Q. You talked first to your deputies, then to Green, and then to Terry?

A. That is right, as I recollect it, that is right.

Q. What do you recall what your conversation with your deputies?

A. I wanted to know what had taken place prior to us getting there.

Q. What did they tell you?

A. There was nothing taking place because there was no one there except the people I mentioned.

Q. Then whom did you talk to?

A. Then when this crowd of people began to congregate, somebody said to me or I spied Green up on the slope, and I walked up there and I shook hands with Jack.

Q. What conversation took place there, what did you say to him and what did he say to you?

A. I shook hands with him, and he says, "It is a good thing you are here, sir."

And then I wanted to know what this dispute or disturbance was about, and he told me that their outfit was entitled to a laborer on this caterpillar to ride with this operator.

827 So I suggested to Green that it involved, in my opinion, a legal technicality, and I thought the courts should settle it.

Then I said to Green, "We are down here to preserve law and order. I don't want any violence and I feel sure you don't," or words to that effect.

And I said, "Are you willing to call this thing off if Terry ceases operations, under the circumstances?"

He said, "Yes," but he wasn't going to tell Terry.

Q. Who was that, "he"?

A. Mr. Green.

Q. Was not going to tell Terry?

A. He positively would not tell Terry.

So I left Green then and I walked down to the other end of the slope and I talked there to Terry.

Q. Mr. Callahan, just to fix our distances, how far apart was the group when you were talking to Mr.—from where Terry and his car were?

A. You mean Terry and his group from Green?

Q. Yes.

828 A. Oh, I would say about maybe, about half a block.

Q. About half a block?

A. About that, something like that.

Q. All right. Then you walked down to Terry?

A. Yes.

Q. Had you met Mr. Terry before that time, or had he been pointed out to you?

A. Well, he had been pointed out to me. I don't remember—I hardly think I did—I think the first time I talked to Terry was when I left Green.

Q. All right. Who was with Terry and his group when you got up there?

A. Well, there was a bunch around, there was a lot of groups of these people around there. There was a group around there, and there was Terry and these two officers, and Joe Kellermann was in the neighborhood somewhere closely, that is to the best of my recollection.

Q. All right.

A. And to the best of my recollection, too, I suggested the same thing to Terry as I did to Green, and that involved a legal technicality, that the thing to do was to break these things up, if he were willing to go across

829 the river with his officers and cease operations with

this fellow and let the court settle it. So that is what happened.

Q. Was that, to the best of your recollection, about the complete conversation between yourself and Terry?

A. As far as I can remember, yes.

Q. What did you do after that conversation took place?

A. Then we stayed around there, they left, and Green and his pickets, or laborers, whatever you call them, they eventually dispersed, and there was no violence.

Q. Did you see anybody slug Mr. Terry?

A. I did not, no.

Q. Or attempt to hit him?

A. No, sir, I did not.

Q. Did you see anybody kick Terry's car?

A. No.

Q. Now after the men had dispersed, you went back to your office?

A. Yes, after the place was cleared, then we went back to the office.

Q. Was there a report made of the incident?

830 A. Yes.

Q. Is that the report that you took before the grand jury when you were subpoenaed up there?

A. Yes.

Q. Do you have that with you?

A. Yes, I have it with me.

Mr. O'Neill: May I see it, please?

(Witness produced a document.)

By Mr. O'Neill: Who prepared this, Jimmie?

A. I did.

Q. Did Joe collaborate with you on it?

A. No. I fixed it myself.

The Clerk of the Court: Defendants' Exhibit No. 6 for identification purposes.

(Whereupon a document was so marked for identification.)

Mr. O'Neill: We offer in evidence, if your Honor please, Defendants' Exhibit 6.

The Court: Any objections, gentlemen?

Mr. Stoddart: Yes, we object, unless you find out when it was made, who prepared it.

The Court: He said when it was made, he prepared it.

831 Mr. Stoddart: I did not understand it.

The Court: Someone said the day or the day after. I don't think this man said so. When was it made?

The Witness: I made it myself the next morning.

The Court: Where?

The Witness: At my office, the private office.

The Court: Now is there any objection?

Mr. Stoddart: I think he ought to be asked if that is part of the record, if it has been in his office since that time.

The Witness: Yes.

Mr. FitzGerald: Object to the question.

The Court: Let him answer it.

The Witness: Yes.

The Court: Any objection?

Mr. Alexander: We want to cross examine before it is ruled on, if your Honor please.

The Court: Well, that is all right. You can do that, considered it as offered.

Any thing further with this witness?

Mr. O'Neill: Just a second, your Honor.

832 Q. Did you see Jack Green go up to Terry's car that morning just before it pulled out?

A. No, I did not.

Q. Did you hear him?

A. Well, when I left Green after my conversation with Green that was the last I saw of Green.

Q. Then you went up to Terry and suggested that he leave?

A. Yes.

Q. Where did you go from there?

A. Then I—I mixed up—down off the slope with Turner and another one of the deputies. Of course, this crowd was dispersing then.

Q. You didn't see Green go up to the Terry car?

A. No, I did not.

Q. Did you hear Green say anything to the fellows about letting them go, and so forth?

A. No, I don't recall that.

Q. In other words, at the time that the Terry car left, you weren't there at that spot?

A. I wasn't at that particular spot. I was in the area, but not there.

Q. I see. Could you give the jury an estimate of about how many men there were there at the time
833 these things transpired?

A. Well, there was an awful lot—awful crowd of fellows there, it is pretty hard to estimate, say between five hundred and a thousand, something like that. It was a big crowd of people there, it is hard to estimate, but it was a big crowd of people.

Q. Did you observe any disorder or any violence?

A. No, I observed no violence there. After my talk with the two gentlemen, it was over in pretty much of a hurry.

Mr. O'Neill: I think you can cross examine.

Cross-Examination by Mr. Alexander.

Q. Mr. Callahan, you have been in public life in Madison County for a great many years, haven't you?

A. That is right.

Q. You were county auditor, do I understand?

A. Yes.

Q. For how long?

A. Eighteen years, I was elected five times and I served eighteen years of the five terms, and then
834 ran for sheriff.

Q. You have been sheriff for one term?

A. Yes.

Q. And are finishing out that term now?

A. That is right.

Q. You have a wide acquaintanceship, I presume, in the county?

A. Fairly wide.

Q. And among others you know Mr. Green?

A. Beg your pardon?

Q. Among others you know Mr. Green and have known him?

A. Yes, I know him as an acquaintance is all.

Q. Have known him for a number of years?

A. As an acquaintance, yes.

Mr. O'Neill: Pardon me, will you talk loud enough, Jimmie, so the jury can hear everything you say?

The Witness: Can you folks hear me?

A. Juror: Not too well.

The Witness: O. K.

By Mr. Alexander: Q. Now when you drove up that morning, there was only the contractor, the two constables, your deputies, and the operator of the machine
835 there?

A. That is right as I remember it, that is right, yes, sir.

Q. And the machine was operating?

A. Yes, the machine—the man was on the machine.

Q. Did you talk to Terry at that time?

A. No, I don't think I did because shortly after that, the crowd of pickets started arriving.

Q. Then these cars began to come up and park alongside that road?

A. That is right.

Q. And the men would leave their cars and come up toward this job?

A. Towards the slope, yes, sir.

Q. And you watched them as they gathered there?

A. Yes, sir.

Q. Did you recognize any of them?

A. Yes, I recognized a number of faces but not names, I didn't know just what their names were, but I recognized a number of them by their faces.

Q. Do you remember any that you did know other than this little group that were operating on the contract and Mr. Green and your deputies?

A. I recognized what?

836 Q. Did you recognize any other of the men who came with that crowd, other than those you have already named?

A. No, I did not.

Q. Now, Mr. Terry was apparently carrying out his contract with the Government—

Mr. FitzGerald: Object to that.

Mr. Alexander: (Continuing.)—at that time?

Mr. FitzGerald: Object to that.

The Court: Read the question.

(Question read.)

The Court: The contract, is that what you mean?

Mr. Alexander: He was working there, you didn't see anything out of the way occurred?

The Court: Do you know? You may answer whether he had a contract with the Government.

Mr. Alexander: I am not asking whether he had a

contract with the Government. I will withdraw that question and approach it in a different way.

Q. Now within a very short time there was a very large number of men at that site?

837 A. That is right, yes sir.

Q. And they were congregated around Mr. Terry's car, weren't they?

A. Part of them were, part of them was congregated up and down the slope, part of them around Terry's car, part of them around Green.

Mr. Alexander: And—

Mr. FitzGerald: Just let him answer the questions. Don't butt in on him all the time.

By Mr. Alexander: Q. Did you at any time there see a government truck come up from the south going north hauling some equipment back of it and possibly having a tractor in the body of the truck? Did you see that?

A. I did not.

Q. Did you see it?

A. No, I did not.

Q. Did you see any men leave that crowd and go down and surround the tractor?

A. No. As I recall it, that tractor you are talking about, the man voluntarily got off of that thing and come up on the slope.

Q. What do you mean, "voluntarily"?

838 A. I mean when this crowd come around there, he just got off and walked up the slope.

Q. You didn't see a crowd of men go down there and surround that tractor, and one of them hold up his hands, and then the tractor stopped, and the man get off?

A. I did not, no, sir.

Q. Did Mr. Terry or anyone with him during that whole period do anything during this whole period that in

your opinion justified you putting him out of the county or telling him to get out of the county?

A. Just a minute, I didn't put him out of the county. I didn't put him out of the county.

The Court: He has answered. He said that he didn't.

By Mr. Alexander: He said he didn't?

A. That is right.

Q. Now you were satisfied that the crowd came there to stop that job, were you not?

A. That appeared to be their concern there, yes.

Q. That was their purpose?

A. Yes.

Mr. O'Neill: Your Honor—

The Court: He has answered, he said it appeared 839 to be their purpose.

By Mr. Alexander: Q. And then you went down there and told Terry that you thought it would be best that he go back?

A. That is right.

Q. You did that to prevent—

A. Violence.

Q. —violence?

A. Anybody being hurt.

Q. In your opinion, violence would have occurred had he not left?

A. That is right, it had possibilities, yes.

Mr. Alexander: That is all.

The Court: Is there anything further from this witness?

All right. Call the next.

(Witness excused.)

Mr. O'Neill: How about the offer of the report?

Mr. Alexander: Just one moment, your Honor. I believe there are a couple of more questions I want to ask Mr. Callahan.

The Court: Call him back. Let's get this along.

840 (Whereupon the witness was recalled, was examined and further testified as follows:)

Cross-Examination Continued by Mr. Alexander.

Q. Mr. Callahan, you were interviewed by Agent Granfield who sits here (indicating)?

A. That is right.

Q. With reference to this incident at approximately in May of 1953?

A. I was interviewed, when, I don't remember. It was after this occurrence.

Q. Now I will ask you to refresh your memory, if on that occasion you did not state to Mr. Granfield this, or this in substance: That while you were standing there and the crowd had gathered, approximately twenty or twenty-five of the men there went to the piece of equipment being operated by Terry's employe, at which time the operator stopped his piece of equipment and got off.

Did you tell Mr. Granfield that?

A. I said that to John Granfield?

841 Q. Yes, at the time that he interviewed you.

A. All right, I will put it this way: If that is on that report, when John Granfield—When did you talk to me, about two or three days after this occurred?

Mr. Alexander: Well, in May sometime, Mr. Callahan.

A. A couple of days afterwards, was it not?

Q. In May of 1953.

A. If that is on the report, then I have no recollection right now, then I said—then I said that.

Q. Are you referring to the report that you made?

A. I am referring to what you are asking about John Granfield.

Q. If you did make that statement to Mr. Granfield?

A. If he has got it down there, I will make it well, we will make it easy.

Q. Would you say you were in error a little while ago when you testified?

Mr. O'Neill: Just a minute before you answer that.

Mr. Oxtoby: Let's finish the question.

Mr. Alexander: Let me finish it.

The Court: What is your objection?

Mr. FitzGerald: Have you finished the question?

842 Mr. Alexander: No.

Mr. FitzGerald: Well, get the question.

Mr. O'Neill: Let him finish the question.

By Mr. Alexander: Q. Mr. Callahan, if you told that to Mr. Granfield in May of 1953—

Mr. FitzGerald: Mr. Green, Marks, or Mr. Granfield?

Mr. Alexander: Mr. Granfield.

The Court: Go ahead.

By Mr. Alexander: Q. Would you say that you did see that occur when you were out there?

A. I will say this: Now we are talking about Granfield's report, that is what you got there, is it?

Mr. Alexander: Yes.

The Witness: I am here to tell the truth and I know that, and I was there to tell the truth as I know it with him, and if that was—is on that report, I said it.

By Mr. Alexander: Q. Well, if you said it to him at that time, would you now say that that did occur out there, does this refresh your memory?

A. No, it doesn't refresh my memory. If it is on 843 there, I said it, and it probably happened.

The Court: Is that all of this witness?

Mr. Alexander: One more question, if your Honor please:

Q. Didn't you hear a man say out there that they ought to throw this truck or car in the ditch?

A. A little, short fellow, very inconsequential.

I said, "Shorty, forget about it. It is over with."

That ended that.

Q. A little, short fellow accompanied by some five hundred to a thousand others?

A. No, not accompanied by five hundred or a thousand others, about twenty of the men out of five thousand or ten thousand that you are talking about was there.

Q. Yet you felt there was sufficient danger there of trouble that Mr. Terry should leave the state.

Mr. O'Neill: I will object to that.

The Court: Objection sustained, he has answered that. Call the next witness.

(Witness excused.)

Mr. O'Neill: Now with reference to our offer of
844 the report, your Honor?

The Court: Any objections to the offer?

Mr. Alexander: No objection.

The Court: It may be admitted.

Mr. Alexander: At this time, your Honor, we have no objection.

(Whereupon said document was received into evidence.)

845 GEORGE MUSSO, called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. O'Neill.

Q. Will wou state your name, please?

A. George Musso.

Q. Where do you live, Mr. Musso?

A. Edwardsville, Illinois.

Q. And you are a deputy sheriff of Madison County, Illinois?

A. That is right.

Q. How long have you been a deputy sheriff in Madison County?

A. How long have I been a deputy sheriff in Madison County?

Q. Yes, sir.

A. I work for the—for Harry Hartmann, First Simon and Henry back in 1936 to 1938, for Harry T. Hartmann from 1942 to 1946, and then went back in 1950 under James T. Callahan.

Q. Prior to that, what did you do?

846 A. I played professional football for the Chicago Bears.

Q. For the Chicago Bears?

A. That is right.

Q. Were you a deputy sheriff on the 13th of April, 1953?

A. I was.

Q. And living in Edwardsville at that time?

A. That is right.

Q. Did anything unusual occur on the morning of April 13th?

A. Anything unusual?

Q. Yes.

A. I was called by the chief deputy, Joe Kellermann, to go down to the Chain of Rocks canal.

Q. Why did he tell you to go down there?

A. Deputy Fricker had called and said they might have some disturbance down there, and he would like for a deputy —another deputy to go down there with him.

Q. All right, what did you do?

A. When I arrived there—

Q. Did you go down by yourself?

A. That is right.

847 Q. In your own car?

A. I arrived there approximately around, oh, I think it was nine o'clock or a little after.

Q. What did you do, leave directly from home?

A. That is right, I went directly from home down to the canal.

Q. Did Joe tell you whether or not he was sending anybody else down?

A. He told me he would call Paul Turner.

Q. Who is he?

A. Paul Turner is the deputy sheriff from Alton, Illinois.

Q. When you got down there, where did you drive your car?

A. To the east side of the canal, and parked it, and then it was kind of windy down there that morning and cold, and I seen Fricker's car there, and I went up to his car, and he was sitting there, and he introduced me to a man that was sitting in the car in the back seat who was supposed to be a bodyguard for a Mr. Terry, and I got in their car, and of course I found out that this gentleman had been a wrestler, and I played football, and we talked sports.

848 Q. Was there any discussion about why you all were there?

A. Yes.

Q. What was the discussion?

A. Well, the discussion at the time was that Mr. Green had gone into Granite City for a picket line, and that this Mr. Florence was the bodyguard for this Mr. Terry, and at that time Mr. Terry and another bodyguard were sitting in another car about 25 to 50 feet away from our car.

Q. Do you know whether or not Florence was armed?

A. He was. We talked guns while we were in there. He wanted to know what kind of guns we carried.

We told him.

He pulled one out of his holster and showed us what he had, and put it back into his holster.

Q. Was there any conversation with reference to compensation or salary there?

A. He told us—

Mr. Alexander: Object to that as immaterial.

The Court: I think it is immaterial what he paid him. Objection sustained.

Q. All right, you saw Fricker and Florence and you got into the car with him?

849 A. That is right.

Q. Did you see Mr. Terry?

A. I didn't. I saw two men over in the car. I didn't know Mr. Terry.

Q. How far were they from Fricker's car where you were sitting?

A. I guess they were 25—between 25 and 75 feet, 50 feet, probably something like that. We were parked on the road going up to the canal road, and they were up on the canal road.

Q. Showing you Government's Exhibit and Government's Exhibit 4-A, which are a sort of composite picture, I will ask you if you recognize this scene.

A. Yes. We were parked down in here, right in here (indicating on photograph), and Terry's car was over in here (indicating on photograph).

Q. Now indicating first that you were parked up towards the top of the ramp leading to the levee road?

A. That is right.

Q. To the road on top of the levee?

A. That is right.

Q. And the other car was parked about where?

A. It was parked over in here, right in here (indi-
850 cating on photograph), about 50 feet from here, up here on the levee.

Q. Up on the road on top of the levee?

A. That is right.

Q. What occurred next?

A. Well, we sat there. Of course Paul Turner then came,

and he parked his car down where I had parked my car, which was on that same road up to the levee, and he came up and got into the car, and we sat there and talked; and within a short time after that, the deputy—chief deputy Kellermann and the sheriff Callahan arrived.

Q. Did you get out of Fricker's car?

A. Yes, we got out of Fricker's car, and Fricker went over and talked to the sheriff, and Kellermann and I was still talking to the wrestler, Mr. Florence.

After a short time there was a few men starting to arrive, and then Mr. Green came up, and the sheriff.

Q. Well, at the time Mr. Green arrived, had there been other men preceded him there?

A. Just a few of them.

Q. Did you see a piece of equipment operating anywhere along the levee there?

851 A. I did.

Q. Calling your attention to those same two exhibits again, would you point out for the jury approximately where that equipment was operating, if it is shown on there?

A. The bulldozer was down in here (indicating on photograph).

Q. Pointing to a spot down in the left lower corner of Government's Exhibit 4 along the banks of the canal.

A. That is right, down close to the canal, not up on this bank here, way down close to the water, closer to the water than it was to the top of the road.

Q. When you first arrived there, was it operating?

A. Yes, sir, there was a man on it.

Q. Did you observe what happened to that equipment?

A. Yes, sir.

Q. Tell us.

A. When these first few men arrived, we noticed at that time, we had gone up and was standing right up on

the levee road where we could see down, where we could see this bulldozer working down there.

Q. Did you see some of those first few men go down to that equipment?

852 A. The first few men arrived to the top of that levee and the first thing we could see was this man got off of the tractor or the bulldozer, just left the bulldozer, walking toward the men that were up on top of the levee.

Q. Did some of the men who arrived down—go down to the bulldozer?

A. Later on, I think they went down there, I don't recall, but I think later on they went down.

Q. You don't recall exactly when they did go down there?

A. No, I do not. The man just got off there and walked away from it, up towards the men who were standing on the levee road.

Q. Now when Jack Green arrived, what happened?

A. The sheriff and Jack Fricker, I believe, went down and talked with Jack.

Q. Well, where was Terry at this time, still in his car?

A. As far as I know, Terry was still either in his car or standing on the outside, I could not say for sure.

Q. Did you observe or watch his movements closely?

A. I didn't. I was still talking to the wrestler. I wasn't paying much attention because there was
853 nothing going on out there.

Q. Well, the men began to arrive then?

A. That is right.

Q. Did they form in groups, or how did they disperse themselves over the levee?

A. Well, they came from different directions and parked their cars and walked up to the levee road.

Some of them drove up to within the levee road, and then they kind of gathered around.

Q. Was there a group around where Jack Green was when the sheriff and Fricker went down and talked to him?

A. Not right at that time, but when the sheriff and Fricker were down talking to Green, then a few of them gathered around.

Q. How about Terry's car?

A. How about his car?

Q. Yes.

A. It was parked about a hundred feet from where they they were talking.

Q. Was there a group around those cars or that car, too?

A. Yes, there was men coming up from the other
854 side of the levee that come up and probably were standing close to Terry's car as far as I can recall.

Q. Now you and the wrestler, the bodyguard, were up around—were up at Fricker's car?

A. That is right, we were standing right at the side of the Fricker car.

Q. It wasn't up, you were back down on the ramp there at Fricker's car?

A. We walked up to the top of the levee road. We were right on top were we could see this bulldozer, that down there, and we stood up and were talking up there.

Q. Now what did the sheriff and Fricker do after they talked to Jack Green?

A. Well, by that time there was quite a few people that had gathered; and as far as I know, they either—Fricker—I think it was Fricker, he came on up and he talked to Terry over near Terry's car.

Q. Did Jimmie go up too?

A. No, I think Jimmie was still talking to Mr. Green.

Q. Did he ultimately go up to see Terry?

A. And then later on he went up to see Terry.

Q. I see. All right. Just tell the jury what you
855 observed as to what happened then?

A. Well, of course these people all gathered around.

Q. How many men would you estimate had accumulated out there by that time?

A. Oh, I don't know, three to five hundred, maybe.

Q. A good crowd?

A. A good crowd, I couldn't say.

Q. Did you observe from where you were standing with Mr. Florence any violence?

A. No, there wasn't any violence.

Q. Did you see anybody swing at Terry?

A. No, I did not, because that is what we were down there for, to protect that if it did start.

Q. You saw no violence that would occasion you taking any action?

A. That is right. The only violence that might have been down there is because—up around Terry's car where the sheriff and Green and Fricker had been standing, and some of the fellows from the back were trying to get up to the front to hear what was being said.

Now they might have been pushing one another, if you want to call that violence.

Q. That is what you did observe happening, is that 856 right?

A. That is right.

Q. After the sheriff went back up and talked to Mr. Terry, what did Terry do?

A. Well, I was standing back there; and I couldn't hear what was being said because we were back quite a ways. I was standing there with this wrestler, of course, when he seen all of these fellows come up, he kind of got scared, and he was—he says to me—he says—

Q. Who is, the wrestler?

A. The wrestler, he says to me, he says, "Will you take me across the bridge?"

He says, "I am going to stay with you."

He says, "Will you take me across the bridge?"

I said, "You stay right here with me, stand right here with me and don't say nothing."

Q. All right, did he leave you then?

A. Oh, no, sir. He stood to me like a fly would to fly paper.

Q. Well, when Terry left, did he still stick to you?

A. He stuck right with me. When Terry got in the car, and I seen the car pull away with this one man
857 and they drove on down the levee road, and the crowd started leaving then, he and I just went over to my car.

We got into the car, and I turned it around and drove up to the canal bridge, and at that time Terry had gotten up on top of the bridge.

I tooted my horn for him to stop, and tooted it and wayed at him, and they finally stopped, and this wrestler Florence got out, thanked me, and went up to his car.

And I turned around and went back to Edwardsville to the sheriff's office.

Mr. O'Neill: You may cross examine.

Cross Examination by Mr. Alexander.

Q. Did you see the other bodyguard?

A. Did I see him?

Q. Yes.

A. Yes, I seen him.

I thought that is what this man told us in the car, that the other man over there was a bodyguard, that they had been hired by Terry.

Q. Did you meet the other bodyguard?

858 A. I don't remember meeting the other guy—bodyguard.

Q. But you sat there for a time, at least, talking in Fricker's car, isn't that right?

A. That is right, Jack Fricker's car, the deputy's car.

Q. And you were there, and this Florence, who was one of the bodyguards, who else was in the car, anybody?

A. Fricker and Paul Turner.

Q. You talked about sports?

A. That is right.

Q. And about guns?

A. That is right.

Q. This man showed you his gun?

A. That is right.

We talked about salaries, the salary he is being paid.

Q. Then when the crowd began to gather, you got up and went up on the levee, do I understand?

A. When the crowd got there.

Q. When the crowd began to come?

A. Just a few men there, yes. No, when the sheriff got there and when the sheriff and chief deputy 859 got there, we got out.

Q. You got out when the sheriff came?

A. That is right.

Q. Did you go up and meet the sheriff?

A. Fricker went up and met the sheriff. He talked to him.

I had nothing to say to him because there was nothing happened there—out there. I couldn't tell them nothing.

Q. All right. Where did you go and place yourself at that time?

A. We walked up towards on top of the levee there up on the road and stood there.

Q. How far would that be from your car?

A. I will say 25 to 50 feet from where our car was parked.

Q. How far from Terry's car?

A. We were about 50 feet from Terry's car.

In other words, there was kind of—we were in the mid-

dle—Terry's car was at one end and the sheriff and Mr. Green down at the other end, and we were in the middle.

Q. After a few minutes—after a few men had come, then Green came?

860 A. That is right.

Q. And he talked to the sheriff?

A. That is right.

Q. You did not hear that talk?

A. No, sir.

Q. Then more and more of a crowd came?

A. That is right, yes.

Q. Did you recognize any of these men?

A. Did I recognize any of them?

Q. Yes.

A. No, I didn't recognize any of these men.

I might have known some of their faces, I didn't recognize them. This was no hand-shaking party down there. We were down there to take care of some violence if there was some violence.

Q. Did you see anybody come there that you knew?

A. No, I couldn't tell you of one that I knew.

Q. Well, you knew Jack Green, didn't you?

A. Jack Green, yes, I knew it was Jack Green.

Q. Had you known him?

A. Jack Green?

Q. Yes.

A. I had known of him.

I couldn't tell you where he lives. I know he is from

861 the Tri-Cities. I don't know, from Granite City, Madison or Venice.

I know of Jack Green, that is all.

Q. Did you recognize any other people in the crowd?

A. No, sir.

Q. Now there was a considerable crowd there?

A. Yes.

Q. In a short time?

A. That is right, within three to five hundred, as I stated.

Q. Well, do you remember talking to Mr. Granfield, don't you, here (indicating)?

A. Granfield?

Q. The FBI Agent. Do you remember telling him about this?

A. Were you down there, John?

I don't remember seeing you down there, John.

Q. No, at an interview he had with you, possibly at the Court house.

Mr. FitzGerald: What do you mean, in Springfield?

The Witness: The sheriff's office, he was talking to 862 the sheriff in there and I one morning.

Q. And you told him what you saw out there, didn't you?

A. Yes.

Q. And you told him it was about a thousand men?

A. No, I didn't say a thousand men.

Maybe there could have been a thousand, I don't know. But it looked to me like there was three to five hundred.

I wasn't counting heads.

Q. I am asking you whether you did tell Mr. Granfield that your estimate at that time was about a thousand men.

A. No, I didn't tell him. I don't think I told Mr. Granfield. If I did, I don't recall it.

Q. Will you look at Government's Exhibit 13-D, please? Do you recognize that as the scene out there that morning?

A. Where is the levee now? Will you show me the levee? Where is the levee?

Q. Do you see those two forks in the road, that fork in the road (indicating on photograph)?

A. I know there was a lot of cars down there, sure. I know there was a lot of cars.

863 I can't place this picture here, I don't see—is this the canal here (indicating on photograph)?

Q. That is the canal, I take it.

A. And this is the canal road up here on top?

Q. I never have been there, Mr. Musso.

Do you recognize that barn?

A. No, I don't recognize the barn.

Mr. O'Neill: I want to object. This picture was not asked about in direct examination. I haven't had any objection to Marks' asking about it if he tells him where the picture was taken from, so the man knows.

Mr. Alexander: I am trying to get it.

Where was it taken from?

Mr. Stoddart: It is in evidence.

Mr. Alexander: Now let's get another picture.

Q. Well, now as I understand, the picture was taken from the bridge, well, you went up on the bridge with Florence, didn't you?

A. That is right.

Q. Did you see Terry on the bridge?

A. Did I see him?

Q. Yes.

864 A. Yes, he must have been there because he was driving the car off of it.

He drove off with the wrestler, the other wrestler.

Q. When you got up on the bridge with Florence, Florence got out of your car?

A. And went up to the other car, that is right.

Q. Did you see what Terry was doing?

A. No, sir.

Q. Well, assume this picture was taken from the bridge.

A. Yes.

Q. At the place where Terry was when you saw him on the bridge.

A. Yes.

Q. Now would you say that that is the scene, the approximate scene of this occurrence?

A. Yes, this is the road that comes from Route 66 over here, that leads up to the canal, and the bridge is over in here, crosses the canal right there.

Q. All right. What would this road be? It looks like a road.

A. I don't know. It looks like a back road.

Q. And this road, would that be the levee road?

865 A. That leads up to the levee road.

Q. And the levee road is—

A. Right along the top there (indicating on photograph).

But I don't recall this barn here (indicating on photograph).

Q. And this incident occurred way down here on the west side of the east levee, didn't it, on the slope of the east levee?

A. This occurred on the east side of the canal.

Q. Yes.

A. On the east side of the canal, that is where it occurred.

Q. On what side of the east levee, wasn't on the west slope of the east levee?

A. The only thing I know, it was on the east side of the levee, of the east side of the canal, I mean.

Q. All right, if you stood on the levee road—

A. You would be looking west.

Q. You would be looking at the canal, facing west, looking at the canal, and the operator of this dozer would be between you and the canal?

A. Right.

Q. And he was on a slope, wasn't he, or on the berm?

866 A. He was down on the—

Q. Flat part?

A. The flat part, yes, down near the water. Not real near the water, but within 50 feet of it, I guess, 25, 50 feet.

Q. Down in the vicinity of it, close to the canal, isn't that right?

A. That is right, yes.

Q. You do not remember seeing this barn?

A. I don't remember the barn, no.

Q. Is this where the two roads meet that you spoke of?

A. No, no.

We were talking about the road up here at the top (indicating on photograph), see, right up here. We were parked right here, and then Terry's car was over in here (indicating on photograph), and the sheriff and Green talked down in here (indicating on photograph).

In other words, when I said—they were in a "T," this one up here, I was in the middle of the "T," and they were on both ends, Terry's car and in conference with Green on the other.

Q. So this picture shows the group of cars parked 867 along this highway?

A. That is not a highway.

Q. Well, or road?

A. It is a country road.

Q. Whatever it is, and the crowd was way down here in the distance, gathered around these cars and this equipment, and up on the levee road, is that right?

A. Well, now wait a minute. The crowd wasn't—what do you mean the crowd was way down—they were up on the road, they were up on the levee road, the crowd.

They had come up here, and they had walked up to the levee road, got up out of these cars and walked up to the levee road.

Q. Where was Terry's car with respect to the levee road?

A. It was on the levee road.

Q. On the levee road?

A. That is right.

Q. Were any of this crowd on the slope of the levee?

A. On the slope of the levee walking up this way?

Q. Yes.

A. They were bound to come up that way. They
868 wasn't going to go way up here and go up (indicating). They just cut right across.

Q. I mean down where this machine was. Didn't they all gather down in there?

A. No, they didn't all.

Q. In the vicinity of the machine?

A. As far as I can recall, I was standing up there when the two men arrived, and we noticed the man get off the tractor and walk up towards the men that had arrived there.

Now I didn't see anybody go down there and get around that tractor. They might have.

Q. You didn't?

A. They might have, I don't know.

Q. Did you see a government truck?

A. I did not see a government truck.

Q. Well, how do you know what truck I am talking about?

A. Well, you said a government truck. I say I did not see a government truck.

Q. Wasn't there a government truck right next to Terry's car occupied by Mr. Lehmann?

A. I don't recall. I didn't see no other car there other than Terry's.

869 Q. All right, let me complete my question.

A. O. K., I'm sorry.

Q. Didn't you see a truck come up the levee road going north, and come up to this crowd, and the crowd closed around it and stopped it, the truck carrying possibly in the

body a tractor of some kind and dragging behind it some pieces of equipment, didn't you see that happen there?

A. I did not see a truck.

Q. And after stopping that machine for some five minutes, didn't someone come up and say, "Let that truck through," and then that truck go through and go north on the road under the bridge, you didn't see that happen?

A. I repeat, I did not see a truck on the levee road.

Q. Now you say this operator got off the machine?

A. Yes, off the bulldozer?

Q. And no one went down there and surrounded the machine?

A. I did not see anybody surround the machine.

Q. You saw him get off?

A. Yes, I saw him get off.

Q. Did you see anyone around the machine at that time?

870 A. No, sir, only himself, that was the only man that was around the machine.

Q. How close to it did you get to that machine?

A. How close did I get to that machine?

Q. Yes.

A. Oh, I will say it was 200, 250 feet, 300 feet, maybe.

Q. Did you know that the operator left the machine running with the scoop up in the air, with the dirt still in it?

A. No, sir.

Q. You did not see that?

A. No, sir. No, sir.

Mr. Alexander: I think that is all.

The Court: Anything further?

Mr. O'Neill: That is all.

The Court: We will take a recess at this time. You may be excused.

(Witness excused.)

871 JACK THOMAS FRICKER, called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. O'Neill.

Q. Please give us your full name.

A. Jack Thomas Fricker.

Q. Talk loud enough now, Jack, so that all of the jury can hear you.

Your name is Jack Fricker, and you are a deputy sheriff in Madison County, Illinois, is that right?

A. That is correct.

Q. Where do you live, Mr. Fricker?

A. At 224, Y. M. C. A., Granite City.

Q. How long have you lived in Granite City?

A. About forty-five years.

Q. How long have you been a deputy sheriff in Madison County?

A. Four years, approximately four years.

Q. Were you a deputy sheriff on the 13th of April, 1953?

872 A. Yes, sir.

Q. As a deputy sheriff, where are your headquarters?

A. At the City Hall, Granite City.

Q. Do you know the defendant Jack Green here?

A. Yes, sir.

Q. How long have you known him?

A. Oh, thirty years.

Q. Is he a personal friend of yours?

A. Yes, sir.

Q. Did anything unusual occur in connection with your duties as deputy sheriff on or about the 12th of April, Sunday, 1953?

A. Yes, sir.

Q. What happened, Jack?

A. Chief Deputy Sheriff Joe Kellermann called the City Hall in Granite City and left word for me to call him on the 12th of April.

Q. Did you call him?

A. Yes, sir.

Q. What did he tell you, and what did you tell him?

A. He said there was a labor dispute out on the canal, and for me to go out there the following Monday morning.

Q. Did he tell you about what time to go out?

873 A. He says, "Go out there around seven-thirty."

Q. All right. What did you do on the following morning?

A. I went out to the canal, drove.

Q. Did you go in your own car?

A. Yes, sir.

Q. By yourself?

A. Yes, sir.

Q. Where did you go out on the canal?

A. Well, I drove all along the canal there by the Chain of Rocks, by the canal bridge.

Q. Did he tell you about where to report that Monday morning?

A. Yes, sir.

Q. Where did he say to report?

A. He said under the canal bridge.

Q. All right. Tell the jury what you did after you got out there. Was there anybody there besides yourself when you first got there?

A. No one, I could find no one.

Q. Had you talked to anybody else besides Joe Kellermann about the business between the time that he called you on Sunday and you went out there Monday morning?

874 A. No, sir.

Q. All right, what did you do after you went along the canal and found nobody there?

A. Went back to Granite City and recalled Kellermann, and he said that I possibly [redacted] too early, he did not think the job started until later.

Q. All right, what did you do then?

A. I called Mr. Green on the telephone.

Q. That is the defendant here, Jack Green?

A. Yes, sir.

Q. About what time did you call him?

A. I imagine around 7:45.

Q. What did you say to him, and what did he say to you?

A. I asked him what the trouble was.

He said there was a little labor dispute, and I asked him where the location was. I told him I was going out there.

Q. Did he say anything else?

A. He said he would be out there.

Q. Was that all of your conversation with him?

A. Practically all of it, yes.

Q. Then what did you do?

A. I drove out to the levee site, situated close to
875 the canal there, and Mr. Terry and two gentlemen was with him was in a car parked on top of the levee.

Q. Did you talk to them?

A. Yes, sir.

Q. Calling your attention to Government's Exhibits 4 and 4-A, Jack. Do you recognize that scene?

A. Yes, sir.

Q. Does that scene depict the ramp that is leading up to the road on top of the levee?

A. Yes, sir.

Q. Now as you came to the levee that morning, did you go up that ramp?

A. I w. it up the road first. M. Terry was parked on the other ide of the canal, the bridge here (indicating on photograph).

Q. First?

A. Yes, sir, first.

Q. I see, that was up on the north side of the canal?

A. North side of the canal.

Q. Is that where you first encountered him?

A. That is right.

Q. Well, what did you do?

A. I had walked up—I left my car parked on the lower road and walked up.

876 Q. That is the road down below the levee, like the one that is shown on this Exhibit 4-A?

A. That is right.

Q. Only on the other side of the bridge?

A. On the north side of the canal.

Q. Did you talk to Mr. Terry?

A. Yes, sir.

Q. What did you say to him and what did he say to you?

A. I asked him what his trouble seemed to be, if he was the contractor.

And he said, he introduced himself, and also introduced his two gentlemen that was with him, Mr. Florence and Mr. Zinn.

He said—I said, "What is your labor trouble or your dispute, or whatever it may be?"

And he said, "Well, they want me to put a man on this caterpillar."

And I asked the gentlemen if it was customary.

And he said, "Yes, but I am going to make a test case out of this one."

Mr. FitzGerald: I don't hear you very plainly, Mr.
877 Fricker. Will you speak a little louder, please?

The Witness: Yes, sir.

By Mr. O'Neill: Q. You said to him what first?

The Court: Wait a minute. Did you hear or not hear?

Mr. FitzGerald: I did not hear his last answer.

The Court: You may read his last answer, if you will.

(Answer read.)

The Court: Proceed with the witness.

By Mr. O'Neill: Q. Well, was that all of the conversation you had with him at that time?

A. Practically all of it at that particular time.

Q. Well, at that time did you observe whether either Mr. Terry or the bodyguards were armed?

A. I told Mr. Terry I was going to go down—I asked him where his caterpillar was. I could see it off in the distance working. I told him I was going to drive down there, which I did; and parked my car on the road going up on this levee, where the gentleman was working with the caterpillar.

878 Mr. Terry proceeded down with his car along the top of the levee.

Q. Well now, I think we can identify the scene—around for the jury here.

Calling attention to Government's Exhibits 4 and 4-A, will you show the jury, pointing, what road Mr. Terry drove down?

A. He came down the top of the levee.

Q. Would that be the road, this road coming down the top of the levee?

A. I came down this one, and Mr. Terry came down the top of this levee like this (indicating on photograph).

Q. Look at the picture again, Jack, now, and see if you can tell which is the road on top of the levee and which is the road down alongside of it.

A. This would be the road on top of the levee right here (indicating on photograph).

Q. That is the road on top of the levee?

A. Yes.

Q. Mr. Terry came down that road?

A. That is right.

It doesn't show the field road. I came down this road along here, see, up this road, and came down here.

Q. The top of the ramp?

879 A. That is right.

Q. Indicating a ramp that leads up from a road shown on Exhibit 4-A to a road shown on Exhibit 4?

A. That is right.

Q. Is that correct?

A. That is right, the old shoulder road was the one I was on.

Q. Where did you park as you came along the ramp?

A. Right along here (indicating on photograph).

Q. Right along the top?

A. Yes.

Q. Where did Mr. Terry park his car?

A. He was back, a little farther back here, I would say.

Q. About how far from your car did he stop his car?

A. Forty, fifty feet.

Q. Where, will you show the jury, if you can, was the piece of equipment operating?

A. It was over on this side here (indicating on photograph), see?

Q. Indicating a point down on the lower left side of the Exhibit 4; toward the canal, and the water, is that right?

A. That is right.

880 Q. Did you have any further conversation then, Jack, with any of the people that were around there?

A. No, sir.

That is, there was no other people there with the exception of the two guards, when I parked my car, and Mr.

Terry pulled up where he stopped his car, one guard got out and came over and got in my car.

Q. I see. Who was that?

A. Florence.

Q. Now you say that the man was—well, what was happening with the piece of equipment?

A. He was operating the piece of equipment.

Q. He was what?

A. He was operating the piece of equipment.

Q. Had he been operating the piece of equipment when you first came out there that morning?

A. No, it wasn't time for him to start the work.

Q. Did you see when he did start work?

A. No, I didn't.

Q. Now I don't believe you answered my question as to whether or not up to that time you had observed whether any of these men were armed.

A. Well, this one gentleman, Mr. Florence, came
881 over to my car and told me immediately that he was armed. He also told me Mr. Zinn was armed.

Q. And he got in your car with you?

A. He got in my car.

Q. Well, what happened next? Did anybody else arrive?

A. Well, we were there about—I would say ten or fifteen minutes, when Mr. Musso came down, and Mr. Turner.

Q. What did George do?

A. He got in the car—in my car also.

Q. With you and Florence?

A. Yes, sir, with Mr. Turner also.

Q. Did Turner get into the car too?

A. Yes, sir.

Q. Was there any discussion in the car about the matter that was transpiring there, or supposed to have been?

A. Well, this one gentleman said that he was getting $25 a day as Terry's guard.

Mr. Alexander: Object.

Mr. O'Neill: Never mind that about the incident.

Q. I mean: Did they talk about—well, let me rephrase that— Strike that question.

882 After Musso got there, and Turner got there, and they got in the car, you had a general conversation among the four of you, did you not?

A. That is right.

Q. What happened next with reference to anybody arriving, if you recall?

Did the sheriff arrive?

A. The sheriff and Joe Kellermann.

Q. Where did they come from, and where did they park?

A. They went up the ramp just ahead of me and parked on top of the levee.

Q. How far would you say it was from the sheriff's car to the Terry car, to the best of your knowledge or recollection?

A. I would say 75—75 feet.

Q. What did the sheriff do?

A. Well, I got out of my car, and met the sheriff as he got out of Mr. Kellermann's car.

Q. I see. Did you have a conversation with the sheriff then?

A. Yes, sir.

Q. What was that conversation? What did you say to him, and what did he say to you?

A. Well, he asked me just exactly what I thought 883 was going to happen.

And I said, "Well, up to now, nothing."

I said, "Mr. Green promised me there would be no trouble."

So he goes back to his car, and I go back to my car, see

Q. All right. You had not talked any more to Terry from the time he came down?

A. I hadn't. That was the last time I ever talked to Terry.

Q. What happened next then?

A. Well, this gentleman—these gentlemen drove up the side of the levee, begin to getting out of machines, and then finally Mr. Green came up from the top—from the southern part of the levee, came towards us.

Q. Well, had other men arrived there from the laborers' group before Jack Green got there?

A. Yes.

Q. How many would you estimate had gotten there before Jack got there?

A. Well, I think between two hundred and fifty and three hundred and fifty. That is the best I could give you because I didn't pay exactly too much attention to 884 that.

Q. Well, is that your estimate of the total crowd, or the crowd that got there first?

A. That is the estimate of the total crowd.

Q. Did you pay any attention to how many fellows got there before Jack Green got there?

A. No, there was quite a few parked down at the bottom of the levee, and they started to come down from the bottom of the levee.

Q. Now, when Jack Green got there, what happened?

A. I got out of the car and met the sheriff and we walked over to meet Jack—Mr. Green.

Q. Now, before Green got there, or before you went over to talk to Green, did you observe what was happening to the piece of equipment that was working down on the berm next to the canal?

A. Well, there was some gentlemen come up on top of the levee, a group of men, and immediately the caterpillar

—the gentleman who was running the caterpillar stopped his equipment and walked over to meet them.

Q. Now, prior to that time, after you had a telephone conversation with Jack Green, before the crowd arrived, did you see him out at the levee?

885 A. Yes, sir.

Q. Well, about when was that, and what happened?

A. That was immediately after I left Terry and pulled up on the brim of the levee. He came down and I walked down to meet him.

Q. Where did he come down? Let me again show you these two exhibits, 4 and 4-A of the Government and point to the jury where Jack came along at when you met him.

A. Well, here is the road down off of there (indicating).

I was parked here. I got out of my car and walked down about like this, and I met Jack (indicating on photograph).

Q. In other words, he was down on the lower east side of the levee?

A. That is right.

Q. Had he come off of this road that is shown as the principal road on Exhibit 4-A?

A. The slue road, that is right.

Q. That is the slue road?

A. That is the slue road, yes.

Q. Was there anybody with him?

A. No, sir.

886 Q. Was he driving his car?

A. Yes, sir.

Q. What kind of a car?

A. A Cadillac.

Q. Was it a light-colored Cadillac?

A. Yes, sir.

Q. Did you have a conversation with him?

A. Very little. The only thing I asked him is if there is not going to be any trouble, and he said no.

Q. Was there anything said about firearms?

A. I told him that the gentlemen up there had a couple of guards with him.

Q. Sir?

A. I told him that Mr. Terry had a couple of guards with him.

Q. I see. Did you tell him whether or not they were armed?

A. Yes, sir.

Q. What did he say?

A. Well, he did not say much. He says he is going back, he will probably be out later.

Q. Did he leave then?

A. Yes, sir.

887 Q. Did he, during that conversation, ever get out of his car?

A. Oh, yes. He walked up to me. We met each other on the brim of the levee.

Q. He did not talk to Terry?

A. No, sir.

Q. Now, getting back to the time when the group had begun to arrive and the man got off of his piece of equipment, what would you tell the jury happened next after that?

A. Well, there was milling around. Jack and the sheriff was talking.

Q. Did you hear that conversation?

A. No, I walked back close to the Terry car.

Q. Where was Terry then?

A. Standing at the back of his car.

Q. Did you see a little government pick-up truck that had been operated by the government inspector on the job, Mr. Lehmann?

A. I never did notice that or see that truck, so help me.

Q. Well, by that time had there begun to gather a pretty good crowd of fellows?

A. Yes, sir.

888 Q. Did you see anybody you knew?

A. Oh, quite a few.

Q. Can you name any of them specifically?

A. Why sure. Vic Ramsey.

Q. Vic Ramsey.

A. And Anderson. There were several—a lot of them, I know a lot of them down there, but I don't know their names, see.

Q. All right. Are most of those men that are associated with Local 397 in Granite City?

A. Well, yes. And I know by speaking to these fellows at various places, I know others that come in from different counties there too that were.

Q. In other words, there were men there who were from other places besides Local 397 of Granite City?

A. That is right.

Q. Well, you say Terry had gotten out of his car and was standing at the rear of it?

A. That is right.

Q. How close were you to him?

A. Oh, I was between 20 or 30 feet from Terry.

Q. Were you standing between him and the group where Jack Green and the sheriff were?

A. Yes, sir.

889 Q. And were there a good many men around both of those groups?

A. That is right.

Q. All right. What happened next?

A. Well, in a case like that—

Mr. Alexander: No.

By Mr. O'Neill: Q. Just tell what happened.

A. I figured the best thing was to get Terry out of there.

Q. Was what?

A. To get Mr. Terry out of there.

Q. Did somebody say that, or what?

A. No, I walked over and asked Mr. Green and the sheriff about getting Mr. Terry out of there, that they could thrash that thing out in some other way.

Q. In other words, you put in your oar down at the group there?

A. That is right.

Q. And then went back up to Terry?

A. That is right.

Q. Did you say anything to Terry?

A. I said, "Terry, I am going to get you out of here."

Q. What did he say?

890 A. "O. K."

Q. Well, now, did Sheriff Callahan come up too at the Terry car?

A. He had talked to Terry prior to that, but I didn't know what the conversation was about.

Q. Did you say the men had gotten pretty close to Terry and his car?

A. Yes, sir.

Q. How close would you say, Jack?

A. Well, they seemed to be standing on the opposite side of his car, on the bridge of the levee.

Q. Ahead of it or back of it, or where?

A. Well, all along the car.

Q. I see. How close would you say they were to Terry, were any of them close to Terry?

A. Oh, three or four feet.

Q. Well, then, what happened?

A. I walked up—I didn't walk all the way up with Jack and the sheriff, but I walked up, called Jack's atten-

tion and the sheriff's, I said, "I would like to get Terry and them boys out of here."

Q. All right. Go ahead. Tell what happened then, to the best of your recollection.

891 A. Green said, "O. K."

And the sheriff said, "O. K."

Green immediately come down through there and met me and walked up there and told the boys to get out of the road and let Terry get in his car and get out of there.

Q. Did Terry get in his car?

A. Yes, sir.

Q. Well now, when Terry proceeded from the back of his car to get in his car, on what side of his car did he get in?

A. On the left side.

Q. That was the driver's side?

A. That is right.

Q. What direction was his car headed in, north or south?

A. It was headed north.

Q. Towards the bridge?

A. Yes.

Q. Did you see Green have any conversation with Terry, did he come up there?

A. Well, he said something to him, but I don't know, I wasn't close enough. You see, there was a bunch of men mingled in there.

892 Q. As Terry came around from the rear of his car to get in on the left side, did you see anybody swing at him?

A. No, sir.

Q. Well, where you in front of him or in back of him?

A. I was in back of him.

Q. Around by the rear of his car?

A. I was close to my car because Jack was ahead of me, see.

Q. Green had passed you and gone up towards Terry's car?

A. That is right.

Q. Did you hear anybody threaten Terry?

A. No, sir.

Q. Well, what did Terry do then, get in his car?

A. Yes, sir.

Q. And leave?

A. And left.

Q. In the meanwhile, where was the other deputy, Mr. Florence?

A. He was in my car with Musso, George Musso.

Q. I see. What happened to him?

A. Mr. Musso took him in his car.

Q. And they left?

893 A. And they left, yes, sir.

Mr. O'Neill: You can cross-examine.

Cross-Examination by Mr. Alexander.

Q. Now on that morning, Mr. Fricker, when you first went out there, there wasn't anyone around, was there?

A. No, sir.

Q. So then you returned to Granite City?

A. Right.

Q. And reported to Kellermann, your chief?

A. Yes, sir.

Q. Now you say you then called Mr. Green?

A. Yes, sir.

Q. Well, what you really did was to go down and see Mr. Green at his office, wasn't it, Mr. Fricker?

A. Not until later.

Q. Well, what was your conversation over the phone?

A. I asked him what his trouble was.

Q. What did he say?

A. A little labor dispute out there.

Q. Anything else?

A. That is it.

894 Q. Well, he did add that he would be out there?

A. Yes, sir.

Q. Now that was a telephone call.

Now you say later you went to the office, did you?

A. Not until after all of the fracas was over.

That was later on.

Q. Well, as a matter of fact, weren't you down in the office that morning before any of this occurred, and weren't you present when Green had a telephone conversation with someone, and didn't you assume that he was talking to Terry from the nature of the conversation? Do you remember that?

A. I don't, no, I don't.

Q. Mr. Fricker, now, you are acquainted with Mr. Granfield here?

A. That is right; yes, sir.

Q. He talked to you about this shortly after it happened, did he not, within a few weeks?

A. Just roughly, in the office there, is all.

Q. In the office?

A. Yes. He never—we never did go into consultation on it.

Q. Well, he went into it this far, did he not: Didn't
895 you then tell him that you arrived out at the Chain of Rocks project at about eight o'clock on Monday morning and saw no one there; that you went back to Granite City, called the sheriff's office to find out where the trouble was; that you were told Terry was the one who said there might be some trouble, and that you then went to Jack Green's office to find out where Terry was, and that while you were in Green's office, Green received a telephone call, and from the conversation you assumed it was Terry who called; and you gathered the impression

that Terry was going to operate his equipment without laborers?

A. No.

Q. You say—do you say that did not happen?

A. I called Jack Green by telephone.

Q. Wait a minute. Do you say that did not happen that morning?

A. Yes, sir.

Q. Do you say you did not tell Mr. Granfield that?

A. I don't ever remember telling Granfield that, no, sir.

Q. Would you say that you didn't tell him?

A. Yes, sir, I would say I didn't tell him.

896 Q. Now then, you went back to the project?

A. Right.

Q. Mr. Fricker, I would like to see if you can straighten me out on this here a little bit.

On these exhibits, that is Government's Exhibits 4 and 4-A, now take Exhibit 4, that is the bridge?

A. Yes, sir.

Q. Now can you see there any part of the road that you came along, that you used that morning?

You will have to speak up so everyone can hear you.

A. It runs down along the levee here, at the bottom of the levee.

Q. There is no part of that road shown on Exhibit 4, is there?

A. No.

Q. Is there any part of that road shown on Exhibit 4-A?

A. I don't see it.

Q. So that the road by which—

A. It is down at the bottom of the levee here, it runs along like that at the bottom of the levee. (Indicating.)

897 Q. So the road by which you came is not shown?

A. That is right.

Q. Did you eventually get on this road that is shown from the bridge?

A. Yes, sir. I came up like this and parked right here at the brink of the levee (indicating on photograph).

Q. Now where was Terry's car at that time?

A. It was over in here, a little farther on up here, see (indicating).

Q. You mean you were south of the bridge?

A. That is right.

Q. Was he south of the bridge?

A. That is right.

Q. About how far south?

A. I would not know exactly how far south, but he was about 50 feet from where my car was parked.

Q. Now will you look at Government's Exhibit 13-D, and I will ask you whether or not you can identify that as a scene of the same area taken from the bridge, the camera looking south?

A. Yes, this is the road that I used that morning.

Q. Well, now let's see here: When the crowd was fully gathered, or about ready to leave, were there all of 898 these cars parked along here?

A. Sir, I didn't notice altogether, but there was a lot of cars parked there; I will agree with you.

Q. You say this road you came to the site on?

A. I came up from here in the opposite direction, see (indicating).

Q. All right. Now do you remember that barn?

A. Let's see your picture plainer here.

Q. Well, study it.

A. Is that a barn, is that straw?

Q. I don't know whether it is.

A. It is straw.

Q. A straw pile?

A. Yes.

Q. Do you remember that?

A. Yes, they are along there.

Q. Well now, the scene of this where the machine was being operated and where you and Terry was, that was south of that straw pile down here at this point, wasn't it?

A. That is right, right over here (indicating).

Q. Over in here (indicating)?

A. Yes.

Q. And the equipment was down on the levee below 899 this line, wasn't it (indicating)?

A. That is right.

Q. And there are no parts of this road shown on Defendants' Exhibits 1 and 1-A, that is Government's Exhibits 4 and 4-A?

A. That is right.

Q. Now this road that is shown along which the cars are parked is not the levee road, is it?

A. No, sir.

Q. The levee road is way over here?

A. On top.

Q. On top of the levee?

A. That is right.

Q. And you were up on top of the levee?

A. Just at the bridge.

Q. And your car parked down where, down around here?

A. No, my car was parked—

Q. Way up in here?

A. The bridge and the levee, back around and headed down.

Q. Now there is another Exhibit, 6, here this also shows the bridge, does it not, similar to Exhibit 4?

A. That is right.

900 Q. Is this the same road?

A. Yes.

Q. These two photographs show the same road?

A. That is right.

Q. That is not where this event occurred at all, is it?

A. Sure, on top of this levee here (indicating on photograph).

Q. Well, this is not the levee road, though, is it?

A. It sure is.

Q. Well now, I understood you to say that—

A. These two roads are the same.

Q. Now didn't you just a little while ago say that Exhibit 4 did not show the levee road?

A. Exhibit 4, which is 4?

Q. That is 4, right there (indicating).

A. This is the levee road on both of them.

Q. That is the levee road?

A. Yes, sir.

Q. Well, do they show any part of where this incident occurred, or can you tell?

A. Yes, sir, right here is where the incident occurred (indicating).

Q. Let's see. Now you are talking about Exhibit 3?

901 A. I don't know what exhibit it is, but this is the road right here.

Q. Now this, you say, is the levee road?

A. That is right.

Q. What is this road that runs off?

A. That goes down off the levee on that old road.

Q. Is that the old road you came in on?

A. That is the road I run up and down, yes, at first.

Q. Would you say that is the straw pile that is shown in that other picture?

A. I don't know whether that is it exactly or not. I didn't pay no particular attention to the straw pile. There were several along there.

Q. Now after talking to Mr. Green, then you returned to this job site?

A. That is right.

Q. And you met these two guards?

A. Yes, sir.

Q. And you found out they were armed?

A. Yes, sir.

Q. Then you sat in the car for a while with one of them, with Mr. Musso?

A. Yes, sir.

Q. Who else sat in the car?

902 A. Mr. Turner.

Q. And Mr. Turner?

A. Deputy Turner.

Q. And you all had a general conversation?

A. That is right.

Q. Now, then Jack Green came?

A. No, no. Jack Green came just as I pulled down the levee with Terry behind; as I come up off the road and turned around and parked, Terry pulled up on the levee and Mr. Green came up the ramp and met me and talked.

Q. Where did he park his car?

A. Down at the foot of that levee.

Q. On what road was he?

A. On the old slue road.

Q. Where were you at the time he came there?

A. Parked right there on the bridge of the levee.

Q. Were you in your car?

A. Yes, sir.

Q. Were these other men with you?

A. No, we just—they just had pulled up.

Q. I don't understand.

A. They just pulled up. Mr. Terry in his car just pulled up and I just got turned around, headed down
903 the levee, when Mr. Green pulled up.

Q. I see, but they were there when you talked to Green?

A. That is right.

Q. Then you walked down towards Green and he walked towards you, and you met and talked?

A. That is right.

The Court: I think we will stop at this point, gentlemen. Be back promptly in your room at two o'clock. You may retire.

(Whereupon the jury retired.)

The Court: Court will be recessed until two o'clock this afternoon.

(Whereupon these proceedings in the above-entitled cause were recessed until the afternoon of this same day, Tuesday, September 21, 1954, at 2:00 o'clock p. m.)

904 Court reconvened in the above-entitled cause at the hour of 2:00 o'clock p. m., September 21, 1954, pursuant to recess.

Present:

Same as before, to-wit:

Mr. Alexander, Mr. Oxtoby, and Mr. Stoddart, appearing on behalf of the Government;

Mr. O'Neill and Mr. FitzGerald, appearing on behalf of the defendants.

905 JACK THOMAS FRICKER, a witness heretofore called on behalf of the defendants, and having been heretofore first duly sworn, resumed the stand and further testified as follows:

Cross-Examination (Continued) by Mr. Alexander.

Q. Mr. Fricker, you have been a deputy sheriff for four years?

A. Yes, sir.

Q. Lived practically all your life in Granite City, I take it?

A. That is right.

Q. What was your occupation before you became a deputy?

A. Steel worker.

Q. Steel worker?

A. Yes, sir.

Q. Where?

A. General Steel Castings.

Q. Were you affiliated with a union at that plant?

A. Well, they had a CIO union down there.

Q. A what?

A. CIO union.

906 Q. Are you still a member?

A. No, sir.

Q. Do you occupy any official position in your union when you were a member?

A. No, sir.

Q. Now you have known Mr. Green for a good many years, is that right?

A. Yes, sir.

Q. Did you visit him in his home?

A. No, sir.

Q. Just friends?

A. That is right.

I have occasion to go over to his office on warrants and various things.

Q. Did you ever visit him up at his lodge?

A. No, sir.

Q. But you did frequently go down to the hall?

A. That is right.

Q. Do you know quite a few members of the union?

A. Well, local residents, I know quite a few.

Q. That is, those who live in Granite City?

A. City of Granite, that is right.

Q. Do you know Mr. Courtway?

A. Just when I see him. I am not well acquainted
907 with him personally.

Q. Do you know Dale Skeen?

A. No, sir.

Q. Or Mr. Graft?

A. No, sir.

Q. Do you know Mr. Green's brother?

A. Well, just when I see the gentleman. I am not personally acquainted with him.

Q. Now when you first talked to Green on that morning, what was it that he said on the telephone?

A. Having a labor difficulty.

Q. Anything else?

A. That is practically all he said.

Q. Well, he said that he would be out there, didn't he?

A. That is right.

Q. Did Mr. Green tell you what the difficulty was?

A. No, sir.

Q. But Mr. Terry did when you got out there?

A. That is right.

Q. And you were introduced to two guards?

A. Yes, sir.

Q. Then you sat in the car with one of them?

A. He sat in my car with me.

Q. He sat in your car with you, and you talked, is
908 that right?

A. That is right.

Q. It was during that period that Green came?

A. Just before the guard came over to get in my car.

Q. Then Green left?

A. That is right.

Q. And then the sheriff and Kellermann came?

A. Musso and Turner.

Q. Musso and Turner.

Now when you talked to Green there, he told you there would not be any trouble, is that correct?

A. That is correct.

Q. And then a few men began to come up, and Mr. Green came there again?

A. Later, yes, sir.

Q. Then after that, a great number of men came?

A. Yes, sir.

Q. Streaming up to this job?

A. That is correct.

Q. And they placed themselves up on the levee?

A. Yes, sir.

Q. Did you see some of them go down to get around Terry's car?

909 A. Well, there was quite a number standing around in the vicinity of Terry's car.

Q. They circled it, did they not?

A. Well, not exactly circled it; they stand alongside of it, behind it.

Q. And Mr. Green stayed back in the background?

A. Further down the levee, that is right.

Q. About how far away?

A. Oh, a hundred feet.

Q. And he was talking to Callahan?

A. That is right.

Q. Then you talked to Terry?

A. No. I just told Terry—I says, "You want to get out of here, do you want to get out of here?"

And he said, "Yes."

Q. And he said, "Yes."?

A. And he said, "Yes."

Q. And then you went back to Callahan?

A. And Mr. Green.

Q. And Mr. Green.

A. Said, "I would like to get Mr. Terry and them two boys out of there."

Q. Why did you want to get them out of there?

A. Well, the situation is pretty tense when you have
910 that many men there with only a few deputies.

Q. And Green agreed with you, did he?

A. Yes, sir.

Q. And then the equipment all shut down and Terry left?

A. The equipment was shut down before that.

Q. Had shut down before.

By the way, did you see a group of men go down and surround that equipment?

A. No, sir.

Q. You didn't see that?

A. No, sir.

Q. Mr. Fricker, you spend time there in the sheriff's office?

A. That is right.

Q. And you know where the records are kept?

A. Yes, sir.

Q. Now do you remember that Mr. Granfield, who sits here, came up to the sheriff's office and interviewed you about this transaction?

A. I don't think Granfield ever interviewed me.

Q. Never talked to you about it?

A. Only occasionally as he walked by.

Q. Now I will ask you if it is not a fact, Mr. Fricker,
911 that Mr. Granfield interviewed you in May of 1953 in the outer office of the sheriff's office?

A. No.

Q. You and he being alone in the room, but Mr. Callahan and one of the other deputies being in and out on occasion?

Mr. O'Neill: On what day?

Mr. Alexander: I cannot give you the date.

Q. In the month?

A. No, he never interviewed me. We might have had a conversation, but definitely—not definitely on this particular case.

Q. It did not relate to this case at all?

A. He might have asked me a question now and then on it. I met him going through when he asked me a question on it, but absolutely to interview me, I don't ever recollect when he held an interview with me.

Q. You don't recollect telling him anything about what happened out there that day?

A. Well, I gave him a silly estimation one time on some men standing up.

Q. Silly one? What was silly about it?

A. Well, he said, "How many was up there, fifteen 912 hundred, two thousand?"

I said, "Maybe twenty-five hundred," just something like that, but I don't ever remember an interview with that gentleman.

Q. Were you in the sheriff's office at that time?

A. Yes, sir.

Q. Well, now I will ask you if on that occasion, or some other occasion, in May of 1953, Mr. Granfield didn't ask you if there was any written report of this incident, to which you responded, "I will look and see."

Do you remember that?

A. No, I don't, because I did not make out the reports.

Q. I will ask you if, following that answer, you didn't go to the files in the office of the sheriff and after being absent looking through the files, come back and say to Mr. Granfield this, or this in substance:

"I can't find any report of it."?

A. Well, it could be possible, I don't remember.

Q. You do not remember doing it?

A. But I referred him to the chief deputy because he is the man who made that report, I would have.

913 Q. You don't remember looking for the report?

A. No, I sure don't.

Q. Now I will ask you if on the same interview you did not state this, or this in substance, to Mr. Granfield:

Mr. FitzGerald: Which interview is this, now?

Mr. Alexander: The same interview at which he asked him about the report.

Mr. O'Neill: You don't know the date of this, do you?

Mr. Oxtoby: May, 1953.

Mr. O'Neill: May.

Mr. Alexander: Of 1953, shortly after this incident.

The Court: Go ahead, will you?

By Mr. Alexander: Q. I will ask you if you did not state this, or this in substance to Mr. Granfield: That you went to Jack Green's office to find out where Terry was and that while you were there in Green's office, Green received a telephone call, and from the conversation you assumed or gathered that it was Terry who was talking—

Mr. O'Neill: Now, your Honor, I will object.

914 Mr. Alexander: (Continuing.) And had the impression that Terry was going to operate his equipment without labor.

Do you say that, or that in substance to Mr. Granfield?

The Witness: I didn't, no.

Q. You say you did not, or you don't remember?

A. No.

The Court: He says, "I didn't."

The Witness: I didn't.

By Mr. Alexander: Q. You didn't say it.

Now I will ask you if you didn't then tell Mr. Granfield at this same time that you then left Green's office and went back to the Chain of Rocks, arriving about 8:45 a.m.; that

you there saw an individual whom you later learned was Terry, and there were two other men in a car and also a man was operating a piece of equipment.

Do you remember telling him that?

A. No, sir, I do not.

Q. I will ask you if you did not tell him thereafter, about half an hour Jack Green drove up alone; and that you then told Green that you did not want any trouble, to which Green replied there would not be 915 any trouble?

A. Well, I made that comment, but I don't ever remember telling Granfield anything like that.

Q. And that you then stated to Mr. Granfield that Green then left the site, saying he was going to set up a picket line, and left without talking to any of the other individuals, did you say that to Mr. Granfield?

A. I did not, as I can remember; no, sir.

Q. Didn't you then advise Mr. Granfield that one of the persons you saw there had a .38 caliber revolver, he was accompanying Terry, but you were not sure of his name, and that you and this man then sat in a car and engaged him with deputy sheriff Musso in a conversation, do you remember telling him that?

Mr. O'Neill: I don't see the purpose of all this.

The Witness: No, sir.

Mr. O'Neill: This man is testifying—

The Court: He can answer—he has answered it.

The Witness: No, sir.

By Mr. Alexander: Q. And if you didn't then tell 916 him, I will ask you, that about 8:30 Green returned with about fifty individuals and some one hundred and fifty to two hundred fifty men came along later on, did you tell him that?

A. No, sir.

Q. Didn't you then tell him that a picket line was

thrown around the piece of equipment which was then operating, and the operator of that piece of equipment then got down?

A. No, sir.

Q. You didn't tell him that?

A. No, sir.

Q. And you say that did not occur?

A. That did not occur.

Q. Then you went over, after talking to Mr. Terry—I will withdraw that.

Didn't you then also tell Mr. Granfield that you then went to Green and told Green that you wanted Terry to get out of there, to which Green said, "O. K.," and Green went over and told Terry to get in the car and get out because of the possibility of there being some trouble?

Did you tell that to Granfield?

A. No, sir, I don't think I told Granfield that, no, sir.

Q. Did that occur?

A. It did occur, but I don't remember ever telling Granfield about it.

Q. You and Mr. Callahan and the other deputies were there, and it was Green that went over and told Mr. Terry?

A. To get in his car.

Q. To leave, to get in his car and get out, and you heard that?

A. Wait a minute, I didn't say that, Mr. Green came over and told Terry he could get in his car. I am the first gentleman that asked him.

Q. That he could get—

A. Yes, sir.

Q. And you are and the sheriff and two other deputies were there?

A. Three other deputies.

Q. Three other deputies were there?

A. That is right.

Q. Did you hear any cursing?

A. Yes.

Q. Did you hear any cursing?

A. Well, I wasn't up close. Oh, the men in various
918 places was stampeding around and talking loud, but I never did hear no cursing of Terry because—

Q. Well, if you heard Green say to Terry that he could leave, you surely could have heard the cursing if there was any, couldn't you?

A. There was no cursing when Jack Green come down to take Terry out.

Q. There was none?

A. No.

Q. How far were you from where Green talked to Terry?

A. Well, Green didn't talk to Terry very long.

Q. Well, that may be, but how far were you from him when you did talk to him?

A. Well, I walked down with Green so he could let Terry get in his car, and Green walked ahead of me through the crowd, and I stopped, I would say, 25 feet from Terry's car.

Q. How close did Green go?

A. Right up with Terry to the car.

Q. Well, you were close enough to hear everything that was said there, weren't you?

A. Well, it is pretty hard to hear that with about fifty men scattered around you all talking.

Q. Well, what were they saying?

919 A. I wouldn't know.

Q. You did not hear anything that was said?

A. Well, I couldn't verify it, no.

Q. Well, I am not asking you to verify it. Tell what you heard, if you can.

A. Well, the only thing I heard plainly was that Mr. Green told the boys to get out of the way and leave Terry get in his car.

Q. And you didn't hear any cursing?

A. Not from Mr. Green, no.

Q. Or anyone else?

A. No, not that I recollect.

Q. At any time while you were there, did you see any government vehicles?

A. No, sir, I did not see any government vehicles.

Q. Did you see any truck up alongside of or in the rear of Terry's car?

A. No, I did not.

Q. Do you know a man named Karl Lehmann?

A. I met the gentleman out here.

Q. Did you see him there that morning?

A. I did not. I never saw him.

Q. Do you know who any of the members of the crowd were that were around in the vicinity of Terry's 920 car when Green talked to Terry?

A. No, I don't think I did.

Q. You cannot remember anyone you saw there that you knew?

A. No, I wasn't looking for acquaintances at that time.

Q. Do you know a man named Paridade?

A. No, sir.

Q. Do you know a man named "Bull" Durham?

A. No, I don't.

Mr. Alexander: I think that is all.

The Court: Anything further?

Redirect Examination by Mr. O'Neill.

Q. Jack, do you recall any conversation or incident about firearms when the conversations were going on between these two groups that you were describing here?

A. Well, some one hollered out, "The man has got a gun!" That is the only thing I ever did hear.

Q. Did you do anything in connection with that?

A. I told the boys that two of those boys was officers, "Don't worry about the guns," or something like
921 that. I tried to make it so that they would hear it, see.

Q. Who keeps the reports in the sheriff's office?

A. They are in the room there in the chief deputy's office.

Q. Is he in charge of that office to keep the files?

A. Yes, sir.

Q. Do you have anything to do with the files in that office?

A. Well, we can go in and investigate them any time we care to.

Mr. O'Neill: I see. That is all.

The Court: That is all. Call the next.

(Witness excused.)

922 KENNETH CHARLES SEYMORE, called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. O'Neill.

Q. State your full name, sir.

A. Kenneth Charles Seymore.

Q. Where do you live, Mr. Seymore?

A. Troy, Illinois.

Q. That is Troy, T-r-o-y, Illinois?

A. That is right.

Q. What is your occupation?

A. I am a contractor. I am a superintendent secretary of the Gorham Construction Company.

Q. Is that G-o-r-h-a-m?

A. Yes.

Q. Is the Gorham Construction Company a corporation?

A. An Illinois corporation.

Q. Where is its office?

A. In the Arcade Building, St. Louis.

Q. How long has the Gorham Construction Company operated as a contracting concern?

923 A. Since 1947.

Q. Do you have other associates in the company?

A. Yes, sir.

Q. Can you tell us just briefly what their former occupations and their backgrounds were?

A. Well, they were—there is three of us in the company.

Mr. Gray Doenges—he is the president of our company.

Q. What is his former occupation?

A. He was with the Sternberg Dredging Company; in fact, all three of us were with the Sternberg Dredging Company until 1947.

Q. Were any of you connected with the Corps of Engineers at any time?

A. I believe Rayback, he is the vice president of the company.

Q. Now was the Gorham Construction Company operating, or did it operate on the Chain of Rocks levee and canal in the year 1953?

A. Yes, sir.

Q. Were you connected with it at that time?

A. Yes.

Q. Did you know a contractor named A. W. Terry, Jr.?

924 A. Yes.

Q. Did you know him personally?

A. No.

Q. How were you acquainted with him?

A. Well, I never met him until—oh, until we did this job for him.

Mr. FitzGerald: I still don't hear you. I can't hear you, and I'm sure they don't all hear you.

The Witness: I say that I never met him personally until after we did this contract for him.

I talked to him on the phone, that was all.

Q. Do you know about when it was that you talked to him on the phone?

A. I would say it was in April or May—I just don't remember which.

Q. Was it after the 13th of April, 1953, approximately, just to the best of your recollection?

A. Something like that, I would say, yes.

Q. Well, tell the jury what he said, and what you said on that phone conversation.

Mr. Alexander: Just a moment, now, please.

I don't see that you have identified whom he talked to.

925 Mr. Oxtoby: There is no foundation.

Mr. O'Neill: One at a time, please.

The Court: One of you please make an objection.

Mr. Alexander: I object as it was not shown it was Mr. Terry to whom he talked.

Mr. O'Neill: I think we can hook it up to your entire satisfaction.

Mr. Alexander: I will be glad to hear you do it.

The Witness: Well, he called me on the phone—

Mr. Alexander: Just a moment.

Mr. O'Neill: I asked him what he said and what this man said.

Mr. Alexander: We object to it at this time, your Honor.

The Court: Does he know it was Terry? That is the sole objection? He afterwards knew Terry?

See what he knows about it.

Mr. O'Neill: I think I can cure it, your Honor.

Q. Did you learn afterwards for sure that it was Terry that you were talking to?

926 Mr. Alexander: To which we object because it involves judgment, "for sure."

The Court: That is perhaps correct.

Did you afterwards learn—do you know that?

The Witness: Yes.

The Court: How? I will try to straighten these attorneys out.

The Witness: Well, he called me on the phone and wanted to know—said this was Terry.

The Court: What did he want to know? How did you know afterwards this was Terry?

The Witness: Well, he gave us a check for the job that we did for him.

By Mr. O'Neill: Q. And in addition to that, did you use his equipment on that job?

A. He left a scraper there to use, one scraper to pull, but before we used it he came in and got the scraper.

Q. Did you meet him at that time?

A. No.

Q. He sent in for it?

A. That is right.

Q. Well, was the scraper that you used and that he
927 came in and got, one that he talked to you about over the phone so that you knew it was him?

Mr. Alexander: We object to that. How would he know?

The Court: You can prove this up. I think the objection

will be sustained, that he knew it was because he talked about a scraper:

Now what happened? How did he know it was?

Go ahead.

By Mr. O'Neill: Q. Well—

Mr. Alexander: We have no objection to your going into what they did.

Mr. FitzGerald: We know that.

Mr. Alexander: I don't see wher conversations are material.

The Court: I don't know what they are. I don't know anything about what he is trying to prove or anything else. I am just trying the lawsuit according to the law, that is all.

Mr. O'Neill: Is the objection sustained to my asking him what the conversation was with Terry?

928 The Court: Yes, it is at this time, unless he can say now that he knew the same man he talked to was Terry.

Mr. O'Neill: All right, your Honor.

Q. As a result of the telephone conversation, did you undertake any work on the levee?

A. To finish his contract.

Q. Whose contract?

A. Terry's.

Q. All right. Did you undertake to finish that contract?

A. We did.

Q. Did you finish the contract?

A. We did.

Q. Whose equipment did you use on it?

A. We used ours.

Q. Was Terry's equipment involved in that transaction in any way?

A. Terry said he would move our bulldozer—

Mr. Alexander: Just a moment, was it used?

The Court: Oh, I don't think—

Mr. Alexander: The point is, your Honor, if they want to lay a foundation for impeachment, they can put the
929 entire conversation—

Mr. FitzGerald: We know that. We are not trying to do anything of the kind.

Mr. Alexander: Then the conversation should not go in.

Mr. FitzGerald: I think it is necessary.

Mr. Alexander: I think he can tell what was done there without going into that.

The Court: What is the question? I will pass on it. Read the question.

(Question and answer read.)

The Court: That can stand. Objection overruled as to that answer.

By Mr. O'Neill: Q. What equipment did you use to finish Mr. Terry's job?

A. We used our scraper and tractor, and we also had a bulldozer blade for the front of the tractor which we used the tractor with the scraper part of the time and part of the time as a bulldozer.

Q. Did the work that you completed for Mr. Terry, or was that work completed under his contract with the Government—

Mr. Alexander: To which we object, if the Court
930 please, as being entirely immaterial to the issue in this case.

The Court: I think that was all answered yesterday by your witnesses, was it not?

Mr. Alexander: I don't think so, only on cross examination.

The Court: One of your men said, if I remember, he completed a contract for Mr. Terry.

Mr. Alexander: That was in cross examination, your Honor.

The Court: Maybe so, but didn't all witnesses say so? What is the difference? I don't see what the difference is.

Mr. O'Neill: Lehmann said so.

Mr. Alexander: I agree he said so, but it was on cross examination.

The Court: Well, that is true.

Mr. Alexander: And they had a right to question the man about it. I didn't object to that.

The Court: I don't see that there is any difference if this man says he did it.

Mr. O'Neill: I think it is of the utmost importance.

931 We propose to show by this witness how it was done, what laborers were used, and the necessity for it.

The Court: That is right. Didn't the government man testify yesterday that this contract was completed for Terry, and Terry got the money and Terry turned it over to these people?

Mr. Alexander: We believe it is entirely immaterial, it was brought out on cross examination.

The Court: Now what is the question?

(Question read.)

The Court: Well, do you know?

The Witness: It was completed.

The Court: Sure, it was completed. Did you make a new contract with the Government?

The Witness: No, it was completed under Terry's contract, and the Government gave a check to Terry.

The Court: Objection will be overruled, it may stand.

By Mr. O'Neill: Q. The Government did what?

A. The Government paid Terry with a check for $1122.00, and we gave him in return, Terry, a check back for $22.00.

932 Q. That was over what the Government paid for that?

A. That was, Terry had two hours coming. In other words, I guess he lacked $1122.00 of having all his hours all in. The contract was by the hour.

Q. Now with the equipment which you have already told us that you used in completing this work for Terry on the levee, did you use any laborers in connection with that equipment?

A. Yes.

Mr. Alexander: To which we object as entirely immaterial.

The Court: Overruled. He may answer. He has answered.

By Mr. O'Neill: Q. Did you?

A. Yes.

Q. Now had you done other work for the Government about that time up and down the Chain of Rocks canal?

A. Yes.

Mr. Stoddart: Objection to it as immaterial.

The Court: I don't see where that is material. We have had a lot of questions in here as to what was customary and what was not. I cannot see where any of them are 933 material.

The whole question is whether under the law there was violation of it in this case. What else he done at the Chain of Rocks, or whatever else he employed, I can't think is material.

Objection will be sustained.

By Mr. O'Neill: Q. Mr. Seymore, in connection with the operation of the equipment of that character and doing work of that kind, that is maintenance work, I will ask you if it was customary and usual that you use laborers or swampers on those jobs with the equipment?

Mr. Alexander: To which we object.

Mr. Oxtoby: Same objection. It was just sustained.

Mr. Alexander: It is immaterial.

The Court: I think it will be sustained.

Mr. FitzGerald: Did your Honor sustain that objection?

The Court: Yes.

Mr. FitzGerald: If your Honor please, you will recall that the government engineers, Mr. Lehmann, was
934 permitted to answer that it was unnecessary to have laborers.

The Court: That is true, I didn't see why they were material in the case at all.

Mr. FitzGerald: Now that was all brought out by the Government.

The Court: I think you can ask this man the same question.

Mr. FitzGerald: That is what I thought Mr. O'Neill's question was.

Mr. O'Neill: That is what I intended to ask him.

The Court: I don't think the other is material. You fellows object, he asked it and he answered it. He asked him now what he did before. I don't think that is material.

Mr. FitzGerald: No, he asked him now—

The Court: What was customary.

Mr. FitzGerald: Yes, customary on this particular kind of work. They said that it was not customary where there was grading and seeding to be done, which is the exact words that he had.

935 Mr. Alexander: You are mistaken. It did not arise in that way. It arose, as I remember it, the question was first asked on cross examination and I think we objected, and then the court ruled on it, and permitted it, and then we went into it.

But there is nothing about seeding in this contract.

The Court: No, I don't understand so.

Mr. FitzGerald: No, there isn't, but both your Mr. Lehmann and the engineer, or Col. Gleason testified to that fact and that was that it was not necessary because this was a grading and a seeding contract.

The Court: I did not understand him to say "seeding".

Mr. FitzGerald: Yes, sir, both of them said that. I

think I can get you it in one of their testimony, in both of the testimony.

Mr. Alexander: The contracts are in evidence.

Mr. FitzGerald: Well, we will ask him if on this—

936 Mr. O'Neill: Withdraw my last question, and let's rephrase it, and maybe we can just get this over with quickly, which I know the Judge wants to do.

The Court: All right, go ahead.

By Mr. O'Neill: Q. I will ask you if in your opinion and from your experience in this kind of contracting work, Mr. Seymore, the use of laborers in connection with heavy equipment such was used in completing Terry's job was necessary.

Mr. Stoddart: Just a minute, it calls for a conclusion.

Mr. Alexander: Object to it.

Mr. Oxtoby: I object, your Honor.

The Court: Wait a minute, gentlemen. There are three of you. I think you ought to give me a chance. I can't take care of all three of you at once.

Who is going to make the objection over here?

All right, Mr. Alexander.

Mr. Alexander: We will object on the ground it is immaterial, your Honor.

The Court: Now read the question.

937 (Question read.)

The Court: Do you mean in any kind of work that heavy equipment might be used in?

Mr. O'Neill: I am trying to make it short, your Honor.

The Court: You are not making it short. You mean on similar work as is being done here?

Mr. O'Neill: On this kind of work.

The Court: On a similar job he did there?

Mr. O'Neill: Yes, sir.

The Court: I think he may answer that.

Objection will be overruled.

The Witness: Yes, they have to have one there.

By Mr. O'Neill: Q. Now will you tell why?

A. It was—you changed from a dozer blade to the scoop, and so the operator couldn't do this alone. He has to be one man to back the tractor up and one to hook it. Also for carrying water for the tractor and cleaning our rollers, we feel it is necessary to have one; and we have always felt that they shouldn't have an operator by himself on a job if something could happen, which has happened.

938 Q. Are you familiar with the terms and provisions of the agreement between the Southern Illinois Builders Association and the International Hod Carriers and Building and Common Laborers Union?

A. Yes.

Q. Are you a member of the Southern Illinois Builders?

A. No.

Q. When you operated Southern Illinois, do you operate under the rules and terms of this agreement?

A. Right.

Mr. O'Neill: Do you have an exhibit again, Mr. Alexander?

Mr. Alexander: Exhibit 8?

Mr. O'Neill: Yes, the one that you did not offer. Here it is, that is the one.

Q. Calling your attention to page 5 of Government's Exhibit 8—

Mr. Stoddart: Government's Exhibit for identification No. 8.

Mr. O'Neill: Mark this as a defendants' exhibit, please.

The Clerk of the Court: Defendants' Exhibit No. 7 for identification.

By Mr. O'Neill: Q. Now this has been marked for 939 identification as Government's Exhibit 8 and Defendants' Exhibit 7, and I ask you to look on page

5 of that agreement, or that exhibit, and note if it reads as follows:

"It is agreed that this contract shall covering the following jurisdiction of work:

Tenders Hod carriers and Helpers"—

Mr. Alexander: Now just a moment!

Mr. O'Neill: This is what they wanted me to do yesterday.

Mr. Alexander: I want you to point it out first and then offer it.

The Court: I cannot hear both of you at once. One of you make it, please. I can't get it.

Mr. Alexander: I am making the objection that he is reading into the record something which has not been proven up.

The Court: I realize it. Are you objecting to it?

940 Mr. Alexander: Yes, I am.

The Court: Objection is sustained.

Mr. Alexander: I want it done in the proper way.

The Court: I don't mean to be "pesky." I just cannot hear with you three fellows objecting at the same time.

Mr. Alexander: The trouble is, your Honor, we think more or less alike and move as one man.

The Court: Your minds track as one. I realize that. Let one of you make it. I don't care which one of you does.

Mr. Alexander: Will you let me see what you want to offer?

The Court: Go ahead, gentlemen.

Mr. O'Neill: Your Honor, maybe I can phrase the question again so it will not be objected to.

Q. I will ask you if in connection with the work of laborers, similar to that that was done in completing the Terry contract on the levee, their duties consisted of the following or part of the following:

941 The signaling, hooking and unhooking, flagging, spotting for all bulldozers, trains, trench machines, derricks, trucks, Hy-lift tractors, and the carrying of coal and other fuel—of course that wouldn't be involved—deckhands on barges, and so forth, and other powerdriven machinery where labor work is involved.

A. We only had the one piece of equipment, the scraper. What he did there was to clean the rollers and watch holes, keep him out of the holes.

Q. Let me ask you then if this was involved:

All cleaning of mud, grease, oil, debris, et cetera, from machinery and parts thereof.

A. Not grease and oil. Mud.

Q. Cleaning and cleaning mud. Mud and greases, that was involved, was it?

A. Yes, sir.

Q. And the laborers on your job on that equipment did that?

A. Did what?

Q. Did that sort of thing?

A. Yes.

Q. And you considered it necessary for them to be 942 employed to do it?

Mr. Stoddart: Object to the question as leading.

The Witness: Yes.

Mr. O'Neill: Who said that?

Mr. Stoddart: I did.

The Court: Is that all of this witness?

Mr. O'Neill: No. I want to offer from the exhibits which previously have been identified as Government's Exhibit 8 and Defendants' Exhibit 7.

The Court: Are either of them admitted?

Mr. O'Neill: No, sir, they are just marked. I am sorry, the exhibit is identified as those numbers.

The paragraph commencing:

"It is agreed that this contract shall cover the following jurisdiction of work,"

and in the following lines in the next paragraph, on page 5, the third completed paragraph on page 6, and the third complete paragraph on page 9, we will offer those.

Mr. Alexander: To which we object.

943 The Court: Objection will be sustained.

Mr. Alexander: No party to that contract.

The Court: I don't know what it is. I don't even know if there is such a contract. You are just offering it on a piece of paper as far as I am concerned.

Mr. O'Neill: The Government told me if I would read it yesterday, it would be admitted.

Mr. Alexander: No. When you show that someone is bound by that contract, yes.

Mr. O'Neill: You didn't have that kind of string on it yesterday. You said, "If you will read it, we will admit it." That was our agreement.

Mr. Stoddart: We can change our minds.

Mr. Oxtoby: That was yesterday. You didn't accept it.

Mr. O'Neill: You have changed your mind.

The Court: I don't know anything about it. I can't control your minds one way or the other. The only thing I can say is that there is not ample proof of that particular exhibit so the court can admit it.

944 The objection will be sustained. I don't even know what it is.

Mr. Alexander: Your Honor, I think the proof does show that certain operators and this union have entered into an agreement, but there is no party to that agreement in this lawsuit as yet. Now, that is the basis of our objection.

I don't know of any contract that binds somebody who is not a party to it.

The Court: I will sustain the objection. Go ahead.

Mr. O'Neill: For the record, your Honor, let me make

this statement: That the defense only offered it at this time for the reason that the Government not only identified it as an exhibit but had it identified by some witnesses whom the Government offered, and made the statement in open court, and in part of the record yesterday, to me that if I will read the provisions of the contract that I thought
945 applied that they would agree that it could be offered in evidence.

Now that statement was made yesterday and is a part of the record here.

Mr. Alexander: I do not want any misunderstanding. As far as the foundation is correct, Mr. O'Neill is correct. I think that is the agreement, and we will never say it isn't; and as soon as they show if is material to the issue—

Mr. O'Neill: What did you offer it for then?

Mr. Alexander: We have not offered it.

Mr. O'Neill: What did you have it identified for?

Mr. Alexander: We had it identified because we knew you were going to bring it up and wanted to have an official copy to be used, that is the purpose. It is immaterial.

The Court: I will sustain the objection. Go on, ask the next question.

By Mr. O'Neill: Q. Did you testify a minute ago
946 that you got a check for $1122.00?

A. That is right.

Q. That check was made payable to Terry, wasn't it, by the Government?

A. Right.

Q. And he endorsed it to you?

A. Right.

Q. You refunded him $22.00?

A. That is right.

Q. On your $1100.00 end of the contract did you make money?

Mr. Alexander: To which we object as being immaterial.

The Court: Objection sustained. I don't think it is material.

Mr. O'Neill: The point is that Terry said he did not—he couldn't make money.

Mr. Alexander: What is the difference? Some men make money, some don't.

The Court: Evidently this man made money or wouldn't take it.

Go ahead. Objection is sustained.

(The following discussion was had out of the hearing 947 of the jury:)

Mr. O'Neill: Defendants offer by this witness to show the services of laborers in the use of equipment on the job which the Gorham Construction Company finished for the Terry Construction Company were not unnecessary, that they were not imposed or unwarranted or superfluous or fictitious in connection with the operation of machinery and equipment then being used and operated in the execution of the contract for the Government.

The Court: Any objection?

Mr. Alexander: We object on the ground that the question calls for the conclusion of a witness on the evidence in this case, the ultimate conclusion on some issues, on matters which they know nothing about because they are based upon the testimony of many witnesses.

The Court: Objection sustained.

Let's go ahead, gentlemen.

(Whereupon proceedings were resumed in the 948 presence and hearing of the jury:)

By Mr. O'Neill: Q. Have you yourself ever talked personally to Mr. Terry at any time up to this present moment about this job or this work?

A. Just when we finished the job.

Q. When was that conversation and where did you have it?

A. Well, I just happened to run into Mr. Terry at another let-in about the time he was to get the check for this work, and the Corps of Engineers, they had another let-in just like that one, and I just talked to him that day.

Q. What did he say to you, and what did you say to him?

Mr. Alexander: To which we object as being a conversation after the event.

The Court: I don't know, unless there was some statement in regard to this particular contract, why he did certain things or did not, that would be proper even though it were made afterwards.

Mr. Alexander: This goes way beyond the period, this thing is all over.

949 The Court: That is, his reason for doing certain things, if that was the conversation.

Mr. Alexander: Then they should have asked the question of the witness.

The Court: I think you are correct. Ask the witness about certain conversations. It might be leading, but you can ask him.

Mr. Alexander: He can only put the question to Mr. Terry.

The Court: That is true.

Mr. Alexander: If he asked Mr. Terry.

The Court: This question is entirely too broad, did he have a conversation and what did he say.

Mr. O'Neill: About this contract.

The Court: Well, I know that. If it is anything impeaching, you can ask.

Mr. Stoddart: When did he ask Mr. Terry?

The Court: I don't know what he asked Mr. Terry. I know he is asking it. It may be if there is anything you asked Mr. Terry that is a contrary answer as to that 950 given by him, you can ask him, if it is impeaching.

By Mr. O'Neill: Q. What was the conversation about with Mr. Terry?

Mr. Alexander: To which we object.

The Court: He can say what it is about.

The Witness: There wasn't much of a conversation about the job. I just met him at this—

The Court: Then we have wasted a good deal of time if it wasn't a conversation about it.

Go ahead, ask the next question.

By Mr. O'Neill: Q. Will you answer the question?

Mr. Alexander: We submit he has answered it. He said it wasn't much about the job.

By Mr. O'Neill: Q. What was the little bit, or not much about it?

Mr. Alexander: To which we object, if the Court please.

The Court: I think he may answer. Let's see what it is about.

The Witness: He just told me he was proud I finished the job and just hoped I made money out of it.

The Court: I don't think anybody has any kick 951 on that.

Mr. FitzGerald: Are you objecting to that?

Mr. Alexander: I don't object to that, but I didn't know what the answer would be.

Mr. O'Neill: I didn't either, Mr. Alexander.

Mr. Alexander: And I will say it is not the proper way to put the question, and Mr. FitzGerald knows that.

The Court: That is correct.

Go ahead. Let's get along.

Mr. FitzGerald: I know nothing of the kind.

The Court: What is the next question?

Mr. O'Neill: Well, I will get it. Just a moment, please.

Q. Were you acquainted with the inspector of the Corps of Engineers who was on this job when Mr. Terry was working there, Mr. Lehmann?

A. Yes, we had a job before that that he was over, he was our inspector.

Q. Sir?

A. He was our inspector on one job before that.

Q. Well, had Terry done other work there?

A. I don't know.

Q. Now did Mr. Lehmann see you working with laborers on the levee there?

952 A. Yes.

Mr. Oxtoby: How does he know?

The Court: Oh, he has answered. Go ahead now.

Mr. O'Neill: I don't know.

Mr. FitzGerald: What was that?

Mr. Oxtoby: It just startled me, that is all.

The Court: Gentlemen, let's try to get along with this lawsuit. I know this jury wants to get along, and so do I.

By Mr. O'Neill: Q. Now in connection with the use of a swamper on the equipment involved in the work on the levee there, will you tell the court and jury, Mr. Seymore, the purposes or uses of the swamper?

Mr. Stoddart: To which we object as repetitious.

The Court: Objection overruled. He may answer.

Mr. Stoddart: Didn't he just go through all that exactly what those swampers did?

The Court: He said what they did for him. If he has any uses of a swamper different than that, he may

953 answer. We have had that since the beginning of the case.

You fellows have had it.

Mr. Stoddart: I thought he already testified to that.

The Court: There were certain questions asked him. If you have any additional use for a swamper, tell us what they are.

The Witness: The only thing that I might not have gotten in there would have been that one of the reasons

we do have them was for is so the man would be there alone, that is all; other than cleaning your tractor, your grease, and your water and your holes, I think I covered that a while ago.

By Mr. O'Neill: Q. Now has there been anything in the custom, use and practice of these swampers whereby you were compelled to use one swamper on each piece of equipment?

A. No; I never did that.

Q. You have used them, how did you spread them out in their use?

A. Well, we have one on about three pieces of equipment.

Q. Was that the general practice and custom?

954 A. Yes. I reckon that is the practice.

Q. How many pieces of equipment did you use in completing the Terry contract?

A. One.

Q. Did you use a swamper there?

A. Yes.

Q. Was there some work to be done there, sufficient work for him to be done there to keep him busy?

A. Well, when he is needed, yes, he has to be there at all times, certainly, to use him.

Mr. O'Neill: You may cross examine.

Cross-Examination by Mr. Alexander.

Q. Were you on this job yourself, did you supervise it yourself?

A. Just got it started.

Q. How long were you there altogether?

A. On the job altogether, I guess I was on the job twice.

Q. Well, how much the first time?

A. Oh, I would say I was there a half day about.

Q. Was that the first day you worked on it?

A. Yes.

955 Q. How long were you there the second time?

A. I would say something like the same amount of time.

Q. How long between those two trips?

A. Well, I was—that was when the job was started, and then I would say within about a week I was back; something like that.

Q. And that was your last visit to the job until it was completed?

A. That is right.

Q. How many men did you have working on the job?

A. I had the operator and one laborer.

Q. Now aside from the time that you were there, you don't know what the swamper did, personally?

A. Just instructed him what his job was, and that was it.

Q. What he did you don't know?

A. No.

Q. What did you see him do there?

A. Well, he helped us hook this scraper up.

Q. How long did that take?

A. Well, I would say thirty minutes.

Q. All right. Now what else did you see him do?

A. Well, that was all that there was to do at that 956 time.

Q. That was all that there was to do, and he had nothing to do the rest of that time?

A. At that time.

Mr. FitzGerald: "At that time," he said, Mr. Alexander.

By Mr. Alexander: Q. That time that the witness was there.

Mr. FitzGerald: Yes.

By Mr. Alexander: Q. And one swamper could easily do all of the necessary work in connection with that particular kind of work you were doing there for four or five or six pieces of equipment, and still not be overworked, couldn't he?

A. We tried to make it four pieces.

Q. You tried to, you tried to make it four?

A. That is right.

Q. You never heard of a rule that there had to be a swamper accompanying every piece of that equipment, did you?

A. No.

Q. You didn't know that—or did you know that this contract which you carried out for Mr. Terry involved or contemplated the use of four pieces of equipment
957 of that type?

A. I didn't know what his contract was for.

Q. You never saw the contract?

A. No.

Mr. Alexander: That is all.

The Court: That is all of this witness?

Mr. O'Neill: That is all, your Honor.

The Court: Call the next.

You are excused.

(Witness excused.)

958 GERVASE A. RUDLOFF, called as a witness on behalf of the defendants herein, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. O'Neill.

Q. What is your name, please?

A. Gervase A. Rudloff.

Q. They call you "Rud", is that right?

A. Yes, but that was mispronounced.

Q. Where do you live, Mr. Rudloff?

A. I live in Modoc, Illinois.

Q. Are you a member of any laborers organization, Mr. Rudloff?

A. Yes, sir, Chester 925.

Q. That is Local 925 of Chester, Illinois?

A. Yes, sir.

Q. Were you a member of Local 925 in Chester, is that right?

A. That is Chester.

Q. In May or June of 1953?

A. That is right.

Q. Did you know one A. W. Terry, a contractor?

A. I don't know him.

959 Q. Personally?

A. No, I don't.

Q. Did you work for him?

A. I worked for him.

Q. That was when?

A. Oh, that was just roughly, I guess, I would say about May or June.

Q. Where did you work for him?

A. Oh, about one mile south of Prairie du Rocher, Illinois.

Q. Tell the jury what job was being done at Prairie du Rocher at that time.

A. Well, I was sent out as a swamper for on a levee job. My job was swamping work, labor work.

Q. Was Mr. Terry the contractor on that job?

A. He was.

Q. And as a swamper what did you do on that job?

Mr. Alexander: To which we object as immaterial, if the Court please. This is after the event.

The Court: Yes.

Mr. Alexander: A different job.

The Court: When was this?

Mr. Alexander: Wo we want to try a collateral is-

Mr. Alexander: Do we want to try a collateral
960 issue?

The Witness: May or June.

The Court: What year?

The Witness: 1953.

The Court: Where was it?

The Witness: In Prairie du Rocher.

The Court: That wasn't on this trial, was it?

The Witness: No.

Mr. O'Neill: It was on a levee job.

Mr. Stoddart: What has that got to do with it?

The Court: I think the objection will be sustained unless you can show something in issue.

By Mr. O'Neill: Q. What sort of work was Mr. Terry doing on the levee?

Mr. Alexander: To which we object.

The Court: He may answer.

The Witness: Grading—turning out the levee and putting it back.

By Mr. O'Neill: Q. What sort of equipment was he using?

A. A "cat" and a scoop.

961 Q. A "cat" and a scoop?

A. And a scoop.

Mr. Stoddart: Your Honor, I think this is highly improper, to try a collateral issue. That will mean we will have to get Mr. Terry to find out what kind of work it was and we will get far afield here in no time at all. This is after the event here.

The Court: After the event, although the same time.

Mr. Stoddart: May or June, after he left, not even the same levee.

Mr. Alexander: April 13th is the last day.

The Court: Oh, I can't see where that is material.

Objection is sustained. I don't think what he did down there—

Mr. Stoddart: I move to strike his entire testimony.

The Court: No, it may stand as far as it goes.

By Mr. O'Neill: Q. All right. Let me ask you another question:

962 Do you know whether or not that was a government engineers job?

A. No, I don't.

Q. You don't know?

A. I think it was.

Q. Sir?

A. I think it was.

Mr. Alexander: Object to what he thinks.

By Mr. O'Neill: Q. Will you tell us what your duties were on that job?

Mr. Stoddart: To which we object.

The Court: Oh, I can't see where it is material, except your right to show that he was employed. I think that is proper.

Mr. O'Neill: As a swamper.

The Court: That is right, you have shown that, and that is all I think there is to it.

Go ahead.

To try all of this other case out there, I can't see.

Objection sustained.

Mr. O'Neill: You can cross-examine.

963 Mr. Alexander: No cross-examination.

The Court: Call the next.

Mr. O'Neill: Do you want to take a recess before the next witness?

The Court: If you want to, we will take a recess. The jury may retire.

(Witness excused.)

(Recess taken.)

The Court: Call the witness.

964 GEORGE D. HAYS, called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. O'Neill.

Q. What is your full name, please?

A. George D. Hays.

Q. Your name is George D. Hays, but they call you "Bill," don't they?

A. That is right.

Q. Where do you live, Bill?

A. Post Office Box 284, Granite City, Illinois, Rural Route 1.

Q. What is your occupation?

A. Laborer.

Q. How long have you been a laborer?

A. Since 1936.

Q. Have you been since that time associated with and a member of Local 397 at Granite City?

A. I have.

Q. Were you a member in April of 1953?

A. I was.

965 Q. Are you a married man?

A. Yes, sir.

Q. Do you have a family?

A. Two boys.

Q. How old are they?

A. 4 and 6.

Q. Where were you working on the 13th of April, 1953?

A. For the Austin Company at the Dow Chemical plant in Madison, Illinois.

Q. How long had you been working there at that time?

A. About a year and a half.

Q. What kind of work were you doing for the Austin Company?

A. I was foreman, labor foreman.

Q. Well, what were your duties as a foreman?

A. Well, read blue prints, lay out excavation, laying out concrete, and putting the men on the different parts of the work that pertains to my part of the job.

Q. That was a large construction project, wasn't it?

A. They were.

Q. In connection with that project, a great many men were employed, were they not?

A. That is right.

966 Q. Were you the general foreman?

A. No, sir, I was labor foreman under the general foreman.

Q. Well, how was the classification, or what is the distinction between a general foreman and a labor foreman?

A. Well, the general foreman has several labor foremen under a certain territory working under him.

Q. And the labor foreman in addition to his duties such as you have outlined for the jury here, reading of blue prints, layout construction sites and assigning men to those jobs, do you have any supervision over the men themselves?

A. Yes, we have to see that the work is performed, that they stay with their work, and that they do a day's work for a day's pay.

Q. Therefore, in addition to assigning work, you have to keep on them to see the work is performed on these projects that you lay out for the blue prints, and so on?

A. Yes, sir.

Q. Were you doing that sort of work as a foreman on that job on the 13th of April?

A. Yes, sir.

967 Q. About how many men would you say you had under you specifically?

A. I had from 16 to 19, sir.

Q. What time did you go to work that morning?

A. That I could not definitely state because of the fact that part of the time we working 10, 12 hours a day, which meant we started at seven o'clock; and other times, ordinarily we started at eight o'clock in the morning. I was there by eight o'clock.

Q. You were there by eight o'clock on that morning?

A. Yes.

Q. Do you remember how you got there?

A. No, sir. By automobile.

Q. Well, did you drive in your own car or did your wife drive you, or what?

A. Sometimes my wife took me down and sometimes I had to drive—ride with someone else since my car was not available.

Q. Did you, when you got there, did you clock in or check in, or what?

A. Through a time clock, yes, sir.

Q. Did you clock in that morning?

A. Yes, sir.

968 Q. What did you do after you got on the job?

A. Well, I went to the plans table to—

Q. Just tell, Bill, talk loud enough so the jury can all hear you here, I mean that this room is hard to hear in. Sometimes our voices drop and we don't get out what we are saying.

A. Yes, sir.

I went to the plans table to check on the excavations and see that I was right on my depth I was digging on the job I was on at the time, and I proceeded to assign the men to the different jobs of the work I was to do.

Q. How long did that take you?

A. Oh, possibly ten minutes.

Q. Well, then what were your duties, what would be your duties from then on, or what did you do?

A. Well, stay there with the men to see that the project was carried on in a manner that I laid it out.

Q. Did anything unusual occur that morning?

A. Yes. That morning I saw a group of men ganging up over at the tool room, and as the foreman it was my duty to see that did not happen.

Q. Let me ask you, before you tell what happened there, had you stopped at the union hall on the
969 way to work that morning?

A. No, sir.

Q. Had you been at a meeting of the union on the 9th of April, 1953?

A. I never miss any.

Q. Beg your pardon?

A. I never miss a meeting unless I am working meetings.

Q. Did you hear Jack Green at the meeting on the 9th of April report an unfair job out on the Chain of Rocks canal levee?

A. I heard him report that he was negotiating with the man that did not want to hire laborers on the work assigned to the laborers.

Q. I see. Did you hear any further discussion about that proposition between then and the 13th of April?

A. I beg your pardon. I did not hear you, sir.

Q. Did you hear any further talk or discussion about that proposition, about the man out on the Chain of Rocks canal levee, between the night of that meeting and the 13th of April?

A. No, sir.

Q. All right. Now you saw the bunch of men, or the group of men over by the tool house, and as foreman
970 you went over to check on why they were congregating there?

A. No, sir. I noticed my men, which were right there

with me, were there, and I went down to get the steward because they were not my men. I have no jurisdiction over any men but what is assigned to me, so I immediately went down and got a hold of the steward, and he came out.

Q. Who was the steward?

A. Mr. Dale Skeen, sir.

And he came out then to break up the men that were ganging up in the tool room.

I went on up to the gang that was there, and they said that they was going to the hall, there was trouble on the job.

At that time they didn't say which job.

Q. Do you know who said that, do you remember?

A. No, sir, I don't.

Q. Were they some of your men that said that, or do you know whether they were your men?

A. I don't recall, sir, definitely, just it was a group of—group discussion, they were all talking.

We went to the hall, and at the time we got to the 971 hall, couldn't get in closer than the railroad tracks, which would be about two hundred feet.

Q. Let me ask you: Who went to the hall?

A. I would say from the looks of the cars pulling out of the parking lot, they all went to the hall, all of the laborers.

Q. Well, do you know how many of the men under you went?

A. No, sir, I don't.

Q. Was there any way you would have of checking how many went?

A. There was—I don't recall at the time whether all of my men went or not. I checked on my return on the time clock so I could make out my time correctly, and I don't recall. I surmised that all of my men did leave, but I couldn't swear to it, sir.

Q. All right. You got up toward the union hall, and the union hall is located on what street in Granite City?

A. It is on Missouri Avenue on the railroad tracks.

Q. There are a number of railroads that cross Missouri Avenue running north and south there?

972 A. Yes, sir.

Q. Missouri Avenue runs east and west, is that right, approximately?

A. Approximately, yes, sir.

Q. And the hall is just across the tracks?

A. Well, the Missouri Avenue dead ends at our hall and then it is called 20th Street where it crosses the tracks.

Q. I see. All right. You got—what did you come in on, Missouri Avenue?

A. No, sir.

Q. You came in on 20th Street?

A. I came in on 20th Street.

Q. And as you got towards the hall, how close did you get to it?

A. About 200 feet, was about as close as I could get to it.

Q. In whose car did you go in?

A. That I don't recall, whether I went in my own or someone else's. It has been so long ago, I don't recall who I rode with or whether I was driving my own car.

Q. Do you know who rode with you, or do you recall?

A. No, sir, I don't associate any certain one. I 973 was mulling around more or less trying to find out something myself, and all I found out is everybody was heading for the canal, so we just drifted back to our cars, and took off for the canal.

Q. Did you go up to the hall?

A. No, sir, couldn't get to the hall.

Q. Did you see anybody at the hall there that you recognized?

A. Not that I could recall at this date.

Q. Well, did you see Jack Green?

A. No, sir.

Q. Did you see Dale Skeen?

A. No, sir, not at that time, no, sir, not after I left there.

Q. Were there a number of other cars and a great number of men?

A. Beg your pardon, I don't hear you.

Q. I am dropping my own voice, aren't I?

Were there a number of other cars there?

A. Yes, there was.

Q. And a number of men?

A. The street and crossing were full.

Q. All right, if you did not go up to the hall, what did you do?

974 A. We followed the crowd out to the canal.

Q. How did you go out, Bill?

A. Went out 67, Route 67 to the highway and back around to it.

Q. Would that be 66?

A. To the 66 and bypassed 40 highway.

Q. Then went west to the Chain of Rocks canal bridge?

A. That is right.

Q. Well, as you got to the bridge there, what did you do?

A. Well—

Q. Did you stay on 66 or pull off the road?

A. We pulled off on the country road alongside the canal, or the canal levee on the east side and walked up the levee, that is to the top of the levee.

Q. All right. Let's get the pictures.

I will proceed until we get the pictures.

Were there others there ahead of you when you got out to the levee?

A. Oh, yes, there was several men ahead of me when I got there.

Q. What would be your best estimate as to how many were there ahead of you?

975 A. Oh, somewhere between two and three hundred men.

Q. You parked your car and walked up the levee?

A. Yes, sir.

Q. Did you see the fellow that the controversy was about, Mr. Terry?

A. No, sir, I didn't.

Q. Well, what did you see up on top of the levee?

A. The canal was there—it is what I seen, the water in the canal, and then later on after we started to leave, why, I seen the piece of equipment down the berm of the levee, as we call it, which is the second slope down, is on the west side of the east levee.

Q. Did you see any cars there upon the levee?

A. Yes.

Q. How close would you say you got to those cars?

A. Oh, possibly 50 foot would be the closest I ever did get to it.

Q. In other words, there was a crowd between you and the cars, and fifty feet was about as close as you could get to those cars?

A. That is the closest I ever got at any one time.

Q. I will show you a couple of pictures identified as Government's Exhibits 4 and 4-A, and ask you if you

976 recognize the scene?

A. Yes, sir.

Q. Would you just kind of point—well, what is at the scene, is that the scene you came out to that day?

A. This is the point of the car was out, that I seen, south of the Chain of Rocks bridge (indicating on photograph).

Q. Whereabouts would you say you parked your car, or does it show here?

A. Well, this is a road below the levee (indicating on photograph).

Q. Yes, sir.

A. We was parked back here close to the trees (indicating on photograph).

Q. You parked before you got down to this ramp that led up on the levee?

A. Oh, yes, we couldn't get to it.

Q. I see.

Now, while you were there, did you see Jack Green there?

A. Yes, I did.

Q. Where was he when you first saw him?

A. He was coming up the side of the levee.

977 Q. Will you tell the jury whether you got there before Mr. Green or whether Mr. Green got there before you did?

A. I got there about ten minutes before Mr. Green got there.

Q. Was anybody with him when he got there that you noticed?

A. Not that I could say was with him because as soon as he started up, the men started walking along behind him.

Q. When you saw him coming along the levee, where was he with reference to that ramp we just looked at there?

A. Well, he was walking up the ramp at the time I seen him.

Q. Coming up to the top of the levee?

A. That is right.

Q. Did you see where he went or whom he talked to, or what he did?

A. Well, he went up and—

Q. I will ask you first if you know Jimmie Callahan, the sheriff of Madison County.

A. I do.

Q. Was he there?

978 A. He—that is, the man that Jack Green approached when he first got to the levee—

Q. I don't think I understand that last statement.

A. That was the first man that Green approached when he got to the levee, was Mr. Callahan, the sheriff.

Q. What happened that you saw there?

A. Well, they shook hands, and like I said, I wasn't close enough to hear any of the conversation, but shortly after they talked for a while. I—Mr. Callahan, the sheriff, went over to the car that was parked there on the slope of the levee.

Q. That was the car that was there before Jack came and before you got there?

A. That is right.

Q. Well, what did Jack do? That is, Mr. Green.

A. Well, he stood over there to one side for some time until finally he went over to where the car was at, and the men opened up and let the car out, they left.

Q. Did you ever go up on the levee—on the top of the levee?

A. Yes, sir, that is where I went and stayed, at the top of the levee.

Q. Did you see a piece of equipment that had been
979 or that was operating there at that time?

A. I saw a piece of equipment, but it was not being operated.

Q. Did you see any men around it?

A. No, sir.

Q. Did you go down to the equipment?

A. I did not.

Q. So you could not tell whether the motor was still running or not?

A. No, sir, I couldn't.

I don't think anyone would leave a piece of equipment situated sitting with the motor running.

Q. Did you see anybody swinging at anybody out there?

A. No, sir.

Q. Were you in a position where you could have seen it if it had happened?

A. I could see most of it from the top of the levee where I was at.

Q. You say when you first got out there that the crowd approximated two or three hundred. Did they keep on coming for a while?

A. Not too long, no, sir.

Q. Well, after the men opened up, and made way, 980 what happened?

A. More or less waited for the crowd to thin out, until the ones on to could get back to the bottom of the hill to go home or back to our jobs.

Q. What did you do, Bill?

A. I returned to the Dow Chemical Company plant.

Q. Did you go back to the union hall on the way back?

A. No, sir.

Q. Do you remember about what time you checked back in at the Dow?

A. Approximately a quarter to twelve, I would say, that I checked back in there.

Q. Were you close enough to hear whether Jack said anything or not, Jack Green?

A. No, sir, I wasn't. The wind was pretty high that day.

Mr. O'Neill: You may cross examine, Mr. Alexander.

981 *Cross-Examination by Mr. Alexander.*

Q. Mr. Hays, how long have you lived at Granite City?

A. I was born and raised at Granite City.

Q. As I understand it, you live outside the city proper.

A. That is right.

I moved—I went to the Service in 1942.

Q. How long have you been a member of the local?

A. Since 1936, the first time I went in was 1929 and lost my card during the depression, In 1930, that is, and I returned in 1936.

Q. I take it you have been active in union affairs?

A. Unofficially, yes, sir.

Q. Have you ever held an official position in the union?

A. I have not, except as steward and foreman.

Q. You have been a steward?

A. Yes, sir.

Q. Now the stewards are appointed by the business agent?

A. That is right.

Q. And the business agent and the steward take care of grievances of the men, and all disputes with the 982 employer?

A. Yes, sir.

Q. Now then, there is a sort of general foreman or general superintendent?

A. General foreman?

Q. General foreman, and he has a number of groups of laborers working under him, each of which has a foreman?

A. Has a foreman under him, sir. The foremen, it is their duty to take care of the men. The general foreman supervises the foremen.

Q. He supervises the foremen?

A. Yes, sir.

Q. But he will have several foremen?

A. Yes, sir.

Q. And then each foreman will have a group?

A. That is right.

Q. Now these foremen of these groups, they are appointed by the employer, but with the approval of the local union, isn't that right?

A. Well, not entirely. The foremen, if they are qualified, are picked by the general foreman with the consent of the employer.

You see, the general foreman actually is in charge of 983 all the men.

Q. The consent of the employer, how about the consent of the union representative by the business agent?

A. The general foreman would not be put on the job, sir, if he wasn't capable of handling and taking care of the work as prescribed by the rules of the union and the company.

Q. I understand that, but I am talking about you as a foreman, when you were appointed to that job, you had to have the approval of your union, didn't you?

A. Certainly.

Q. Before you could get the foreman's job.

A. But I was picked by the general foreman on the job.

Q. Yes, you were picked by the general foreman.

A. Yes, sir.

Q. And then he obtained the approval through the business representative, Mr. Green, isn't that right, of your appointment?

A. Now that I wouldn't say that it has to go to that extent because these men know when we are sent down there, whether we are qualified for that job or not; and if they need another foreman, they don't have to go through the business representative to say, "We want so and so 984 for a foreman."

Q. Then you went—you were sent down by the union to be the foreman, were you?

A. No, sir, I was sent down as a laborer.

Q. As a laborer. Did you work as a laborer?

A. Yes, sir.

Q. Then when were you appointed foreman?

A. About a month and a half after I went on the job there.

Q. How long was it before April 13, 1953, that you became a foreman?

A. Approximately a year and a half.

Q. Who was the general superintendent that appointed you?

A. The general labor foreman.

Q. The general labor foreman?

A. Johnny King.

Q. Was he a member of your local?

A. Yes, sir.

Q. Was he picked by your local and recommended to the company?

A. That I wouldn't know, sir, who picked him. You would have to ask somebody in connection with that.

Q. The general foreman is also a union man?

985 A. Yes, sir.

Q. Then I assume above him is the general superintendent or something of that nature.

A. Each division of the job has a superintendent.

Q. And he is a non-union member?

A. I wouldn't say that.

Q. Ordinarily wouldn't you say that?

A. He is a representative of the contractor brought in by the contractor.

Many of the superintendents hold union cards.

Q. Now you are there to see that these men properly do their work?

A. Yes, sir.

Q. And to also see that they are also properly treated by management?

A. That is right, sir.

Q. So that you are really there in a dual capacity, one representing the men and one representing management?

A. That is right.

Q. Now you had about eighteen men, I think you said?

A. Somewhere between sixteen and nineteen, that is generally what our crews run at.

986 Q. Were any of those men members of your local, those that were working under you?

A. Local 397, I don't recall as they were, any of them, at that time.

Q. There were members of the local working there?

A. On the job.

Q. But in addition, there were a lot of laborers who were not members, isn't that right?

A. That is right.

Q. Now they were what is commonly known as permit workers, weren't they?

A. No, they were members from sister locals.

Q. Well, don't they have some kind of a permit system?

A. No, sir, it is no permit system whatsoever.

Q. Don't they have to go down and get the approval of your local before they can get jobs?

A. They have the approval of their own local through our local, through an international agreement.

Q. Yes. In other words, that is a part of your union workings, that a man coming from one local reports in to the local covering the territory he wants to work in?

A. Not necessarily.

Q. Or can get a job in?

987 A. He does not necessarily report to the representative of our local.

He may be sent directly by the representative of his home local.

Q. And he can work without communicating with the local that has jurisdiction?

A. Our jurisdiction—whoever is in charge of the jurisdiction of our local, call in for so many men. They will send them out then.

Q. Well, I want to get this straight, if I can, Mr. Hays: Can a worker, say, from some local here in Quincy go down and obtain employment in your jurisdiction without communicating with your local?

A. I said the man himself did not have to communicate.

Q. But somebody does?

A. They will communicate from local to local, yes; but the man does not have to report to our local.

Q. But if you knew a man had been put on the job from some other local, as a representative of your local you would report that?

A. That is not my category.

Q. That is not part of your duty?

988 A. No, sir.

Q. Whose duty was that?

A. That would be the steward's duty, sir.

Q. The steward's duty?

A. Yes, sir.

Q. And that man would have to observe all of the rules of your International?

A. That is right.

Q. Would he not?

A. He would.

Q. And the rules of your International require that your members and workers of this kind live up to the directions of the executives of the local?

A. Would you mind repeating that, please? I didn't catch part of it. I am a little hard of hearing.

Q. Well, isn't it a fact that a man who comes into your jurisdiction and works, that he is bound by the same rules that you are, that your membership are bound by?

A. I would say yes, he would be.

Q. Now you attended the meeting on the 9th of April?

A. That was one, that was one just prior, yes, sir.

Q. Well, it was the 9th, and this incident occurred
989 on the 13th.

A. That is right, the meeting just prior.

Q. And you heard Mr. Green report about this levee contract. Just what did he record?

A. He reported that there was a contractor that came in on the levee job that did not see where he needed labor, where labor was entailed on the job, and that he was still negotiating with the man.

Q. Still negotiating with him?

A. Yes, sir.

Q. Did he tell you who it was?

A. He told me—he told who it was, but at that time I didn't recall the man.

Q. Did he say also that Mr. Wright of the Midway Construction Company was doing the same thing?

A. No, I don't recall whether they were both reported at the same meeting or not.

Q. Did you attend the meeting of May 14, 1953, the first meeting after the 13th of April?

A. Yes, sir, I did.

Q. Did you hear the report of the business agent on that occasion?

A. I did; but I don't recall it.

990 Q. Did he then report that the dispute on earth-moving job in the canal area, contractors Terry and Wright, replaced by Gorham & Company, contractors Terry and Wright have moved equipment off job?

A. Yes, sir.

Q. Do you remember he did so report?

A. I don't recall it word for word, but I do remember him.

Q. That general substance?

A. Yes, sir.

Q. Well, this wasn't an earth-moving job, particularly, was it?

A. Yes. Any time you move soil, you are moving earth.

Q. Was the matter discussed in the union meeting by the membership and the officers on April 9th?

A. That I could not say for certain it was.

Q. How many members were there that night?

A. That is something that I could not swear to.

Q. Well, I mean just your judgment. How many were there?

Mr. FitzGerald: Was that at the meeting?

991 Mr. Alexander: At the meeting on April 9th.

Mr. FitzGerald: I don't see how that is in any way material.

The Court: If he has an idea, he can tell us how many were there.

The Witness: Oh, there might have been sixty, eighty.

By Mr. Alexander: Q. Do you remember any who were there?

A. No, sir.

Q. Any at all?

A. Not that length of time away, no, sir.

Q. What position did your business representative take with respect to the employment of labor on this equipment?

Mr. O'Neill: I will object to that unless he makes it clearer.

The Court: What position?

Mr. FitzGerald: Objection, your Honor.

Mr. Alexander: I will ask this:

Q. Well, what did your Mr. Green say he was trying to get the contractors to do, at the meeting on April 9th?

The Court: He may answer.

Mr. O'Neill: Go ahead.

992 The Court: Did he say what he wanted them to do?

The Witness: No, he did not definitely say what

he wanted them to do, but we all know that all he was trying to do was get men to work that had been assigned and agreed on and signed by agreement—that had been assigned to us for some time.

By Mr. Alexander: Q. Well, did you have any agreement with Mr. Terry or Mr. Wright?

A. We couldn't have an individual agreement with every man who comes in to do a small job in the territory. They have an association of contractors that we have agreements with.

Q. Yes, you have a local association down there of construction contractors, and you have an agreement with them?

A. We also have a national association, sir.

Q. Yes, but Mr. Terry wasn't a member of that, or Mr. Wright, were they?

A. That I could not tell you. I don't know.

Q. Your position—the position of your union was 993 that these contractors should have a swamper with every piece of equipment of this character, wasn't that so?

A. What do you designate as a swamper?

Q. A laborer. Isn't he generally called a swamper on a dozer?

A. We have—we don't call a swamper. We have men that work with the engineers, attending the engineers and tending equipment.

Q. You contend that every dozer should be accompanied by one of these attendants, don't you, a laborer?

A. We don't contend that at all, sir.

Q. You don't. What do you contend?

A. We sometimes have one man working two or three pieces of equipment if it is possible for him to take care of all of it.

Q. And that is the customary thing—the custom and rule down there?

A. Certainly where there is work for a laborer, we do it.

Q. You have no rule, never heard of a rule that there must be a laborer accompanying every piece of this equipment of this character, do you?

A. Not to my knowledge.

994 Q. Now who was the first man you talked to about this situation at the plant that morning?

A. I couldn't say. I don't recall of anyone that I specifically talked to at all about it.

Q. Did you talk to Dale Skeen at any time about it?

A. Not until I come back over from the tool room; after I got him, after I got him I told him I was going to the hall with the rest of them.

Q. What was he doing at that time?

A. He was standing there with a group of men.

Q. Did you see that he left?

A. No, sir, I did not.

Q. Did the man with him leave?

A. All the men in the vicinity right at the time were leaving—all leaving at the same time.

Q. They were all leaving as a group?

A. That is right.

Q. And you went down to the hall?

A. Yes, sir.

Q. Do you remember who rode with you?

A. No, sir, I don't even know whether I was driving or whether I rode with somebody else.

It didn't make an impression on me at the time.

995 Q. Now whom do you remember seeing down at the hall?

A. No one that I could specifically name. I could probably name you—

Q. There were men gathered there from all of the plants in that immediate locality, weren't there?

A. There was men gathered from several counties there.

Q. Several counties?

A. Yes, sir.

Q. There were men from the Granite City Steel Company, were there not?

A. That I couldn't say because I don't know where these men are working. I am not in a position to know where they all are at.

Q. I see, but they were generally the laborers in the jurisdiction of your union?

A. That is right.

Q. Well, does your union jurisdiction cover or—extend into any outside county?

A. That I don't know.

I could tell you where the boundary lines are, but where the county lines are, I don't know.

Q. Well, what is the furthest town east that you know of?

A. East would be—the first town would be Glen Carbon.

996 Q. That is in your territory?

A. No, we don't go that far.

Q. It doesn't go that far, does it, those men are permit workers?

A. They—

Q. (Continuing.) Aren't they that come from Glen Carbon?

A. It is laid out about half way between the outskirts of both towns.

Q. Is the East St. Louis in your jurisdiction?

A. No, sir.

Q. Now what did you see happen at the hall?

A. Sir?

Q. What did you see happen at the hall?

A. I seen nothing happen except a bunch of men milling around, and finally they started yelling, "Let's go to the canal," so us on the outskirts went along with the rest of them.

Q. Did you know what you were going out there for?

A. I had a very good idea.

Q. Had you talked to anyone about what you were going to do out there?

A. No, because I didn't know myself what I was going to do out there.

997 Q. But you did have a good idea?

A. Yes, sir.

Q. Now you got out there, and where did you go?

A. Parked at the foot of the levee, and walked up to the levee.

Q. Did you stay in one position all of the time?

A. I wouldn't know whether I had stayed in one position all the time because I am a nervous type. I walk around.

Q. Where was Mr. Green when you first saw him?

A. Just starting up the side of the levee.

Q. From where?

A. Where the road goes up the side of the levee.

Q. Was there a group of men in his vicinity?

A. The men were grouped clear to the foot of the levee.

Q. And you saw him as he came up to that group of men?

A. Yes, sir.

Q. Did you see where he came from?

A. No, sir.

Q. You did not see him park his car?

A. No, sir.

Q. So you don't know how long he was there?

A. I told you what time I seen him from when he
998 hit the foot of the levee.

Q. Yes, that is the first that you saw of him?

Yes, sir.

Q. Now, when you first got up there, what was it— I understood you to say that you saw?

A. Sir?

Q. What did you see when you first got up on top of the levee?

A. The canal is the first thing I saw, very pretty blue water.

Q. Anything else?

A. I saw the men as I was going up.

Q. Were there any men around there?

A. There was men on the levee as I went up, yes.

Q. Were there any down on the slope of the levee?

A. On the east slope, yes.

Q. How about the west slope?

A. That I couldn't say when I first went up.

Q. Well, were there later on?

A. Later on there was the men that drifted part way down the levee. Some of them went down to look at the water.

Q. To do that?

A. Went down to look at the water, talk about what
999 the possibilities were of fishing.

Q. Did you go down with them?

A. No, sir.

Q. How far was it to the water?

A. 150 feet.

Q. You mean to say you heard them talking down there about going fishing?

A. They were talking as they went down.

Q. As they went down?

A. Yes, sir.

Q. What was going on around them at that time?

A. Sir?

Q. What was going on around there at that time?

A. That is all that I know of, is what was right in the immediate vicinity of me, was the talk that was going on right there in the immediate vicinity.

Q. Can you tell us who any of those men were?

A. No, sir, not at this late date.

Q. Now you saw this piece of equipment out there, a dozer, you saw that, didn't you?

A. Yes, sir.

Q. Where was it?

A. Setting off just to the south and west of where we were at.

1000 Q. How far from you?

A. Oh, it was 500 feet from where I was at.

Q. Was it operating?

A. No, sir.

Mr. FitzGerald: Object to that. It has been asked, if the Court please. The man said it was so far away he didn't know.

The Court: Objection overruled. Go ahead.

By Mr. Alexander: Q. Could you see whether it was moving?

A. No, sir, it wasn't.

Q. It was at a standstill?

A. Yes, sir.

Q. Did you see anybody go down there?

A. No, sir.

Q. Now what other cars did you see there in the immediate vicinity of where you were standing?

A. There was only one car up there near the top of the levee. The rest of them were parked along the berm that I seen.

Q. Who was standing at that car?

A. Well, at the time I couldn't say. Later on, the sheriff and his deputies walked over there.

1001 Q. Were there any sheriffs or deputies there when you came, do you know?

A. There were.

Q. They were there then?

A. Yes.

Q. Did you see a pick-up truck there?

A. No, sir.

Q. This car that you saw, is that where you saw Mr. Green walk up and talk to the man?

A. I did not say I seen him walk up and talk to a man. I seen him walk over to the car, and then the car left.

Q. Is that the car that he walked over to, and then shortly thereafter the car left?

A. Yes, sir.

Q. Now didn't you see a pick-up truck there close by that car?

A. No, sir, I did not, sir.

Q. During the time that you were there, did you see a car come along that road, the levee road and pass through this crowd, a truck?

A. There was no car that came along that levee road and passed through that crowd.

1002 Q. No truck?

A. No, sir.

Q. Did you see a truck pass long that levee road while you were there on which there was loaded a tractor of some kind, and that was dragging another piece of equipment behind it?

A. No, sir.

Q. And when it got up to the crowd, the crowd surrounded it and stopped it?

A. I did not see it, sir.

Q. At any time while you were there—I will withdraw that.

Did you see that this truck stopped with men both in the front and rear of it?

A. Sir, I did not see a truck.

Q. Now just a moment, I have not finished this question, Mr. Hays. I know you said that.

Now I am going to another question.

Did you—that includes the truck—did you while there was a truck there with a tractor on it and dragging another piece of equipment see in front of the truck a group of men and in the rear a group of men, and as it stood there did a man come running up and say, "Let that truck through!"?

1003 Did you hear that?

A. I did not, sir.

Q. While you were there, did any group of men go down to where this equipment of the contractor was standing, and surround it?

A. No, sir, not to my knowledge.

Q. How far were you from this car, approximately, that left this scene when Mr. Green had gone down to it?

A. Approximately fifty feet.

Q. And you didn't hear anything that was said?

A. No, sir.

Mr. Alexander: I think that is all.

The Court: Any further questions?

Mr. O'Neill: That is all.

The Court: I think we will stop at this point.

(Witness excused.)

The Court: Now ladies and gentlemen, remember the admonition of the court. I don't know how near we are through with this, but we are not through, and just keep your minds open until we are all through.

1004 All of you may be excused until tomorrow morning at ten.

(Whereupon these proceedings in the above-entitled cause were adjourned until the following day, Wednesday, September 22, 1954, at the hour of 10:00 o'clock a.m.)

1005 Court reconvened in the above-entitled cause at the hour of 10:09 o'clock a.m., September 22, 1954, pursuant to adjournment.

Present:

Same as before, to-wit:

Mr. Alexander, Mr. Oxtoby, and Mr. Stoddart, appearing on behalf of the Government;

Mr. O'Neill and Mr. FitzGerald, appearing on behalf of the defendants.

1006 The Court: You may call the witness.

PAUL TURNER, called on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. O'Neill.

Q. State your full name, please.
A. Paul Turner.
Q. Where do you live, Mr. Turner?
A. 206 Mather, Alton, Illinois.
Q. What is your occupation?
A. Deputy sheriff, Madison County, Illinois.
Q. As deputy under James T. Callahan, sheriff?
A. That is correct.
Q. Are your headquarters in Alton?
A. Our headquarters—our office is in Edwardsville.
Q. I mean as a deputy you work out of Alton?
A. I work out of Alton district.
Q. Were you a deputy sheriff on or about the 13th of April, 1953?
A. I was.
1007 Q. Do you recall anything that happened on the

morning of April 13th in the line of telephone calls from Joe Kellermann?

A. I do.

Q. Tell the jury what the telephone call was about.

A. I had a call from Mr. Kellermann, our chief deputy, to go to Chain of Rocks levee, that there was supposed to be trouble.

Q. Did he tell you where to go on the Chain of Rocks levee?

A. No, no particular place, no.

Q. About what time was that call?

A. Somewhere in the morning, I would say around ten or ten-thirty, I don't recall the exact time.

Q. You don't recall what time it was?

A. No.

Q. What did you do?

A. I went to the levee.

Q. Did you go down by yourself?

A. I did.

Q. In your own car?

A. I did.

Q. Where did you go, Mr. Turner?

A. In reference to the levee?

1008 Q. Yes, sir.

A. Well, it is where Route 67—

Q. 66?

A. 66 crosses the canal there.

Q. At the bridge?

A. At the bridge.

Q. Whom did you find when you got there?

A. I found two other deputies, Mr. Musso and Mr. Fricker, and a fellow by the name of Florence that I was acquainted with.

Q. Those are the men that you met, that you either knew or became acquainted with?

A. That is correct.

Q. Did you see a Mr. Terry there?

A. I do not know the gentleman.

Q. Well, was he discussed, or do you know whether or not he was there?

A. From the discussion, I think he was there.

Q. Did you see any equipment or automobiles there?

A. There was another automobile there besides our own.

Q. By "our own," do you mean the cars belonging to the other deputies?

A. To the deputies, yes.

1009 Q. Where were all of the cars located, just generally?

A. They were setting right on top of the levee.

Q. Was there a road along the top of the levee?

A. Yes, there was.

Q. Now with reference to the car other than the ones belonging to the deputies, about where was it sitting with reference to your car?

A. To my car, I would say approximately a hundred feet or better.

Q. Did you see any equipment along the levee?

A. Yes, there was one.

Q. What kind of piece of equipment was it?

A. I would call it a caterpillar with a—I imagine a dirt loading machine it was pulling behind it.

Q. Was it in operation when you got there?

A. It was.

Q. Did it continue to operate while you were there?

A. It did.

Q. Did you see it cease operation—

Wait before we come to that.

Did you have any conversation with anybody after you arrived there?

A. The other two deputies and Mr. Florence.

Q. Where did that conversation take place?

1010 A. That took place in one of the cars, I think it was Jack Fricker's car, if I recall.

Q. From that conversation did you ascertain whether Mr. Florence was armed?

A. Yes.

Q. Was there any conversation about why you were all down there?

A. Not too much, no.

Q. Well, do you recall any?

A. Nothing, only that Mr. Florence was there as more or less to help Mr. Terry.

Q. As bodyguard?

A. As I imagine, to body guard, there was nothing said about bodyguard.

Q. All right. Did you yourself talk to Mr. Terry?

A. No.

Q. How long were you there before anybody else came?

A. Approximately twenty-five minutes.

Q. Well, did you remain in the car all of the time until the crowd began to arrive?

A. I stayed in the car until our sheriff and chief deputy arrived.

Q. I see. Did they arrive before the men from the union began to arrive?

1011 A. Yes, sir.

Q. About how long after you got there was it when Mr. Callahan and Mr. Kellermann arrived?

A. Approximately twenty-five minutes, a half hour, something like that.

Q. Did you have any conversation with them?

A. The only conversation I can recall— I don't know who said it—said, "I guess we should go home because there was nothing going on."

Q. All right. Did you go home?

A. No.

Q. What happened?

A. We seen some cars coming down the levee from Granite City.

Q. Were you still in the car at that time?

A. No.

Q. You had gotten out?

Q. I had gotten out.

Q. Where were you with reference to your own car and the other deputies' cars?

A. I was practically by the side of my own car.

Q. Did you ever get very far away from them?

A. Not too far from the cars, no.

Q. All right. The other cars came down the levee. 1012 What happened when they came down the levee?

A. Well, the people got out of the cars, and had a conversation with Mr. Callahan and Mr. Kellermann.

Q. Do you know Jack Green?

A. No.

Q. Did you hear or learn that he was there that day?

A. Yes, I heard.

Q. Was he involved in the conversation with the sheriff and Mr. Kellermann?

A. If he is the man that I thought was Mr. Green, yes, he was talking to them.

Q. Well, this gentleman here is Jack Green. Do you remember now having seen him there that day?

A. He is the man.

Q. Did you go to the scene of the conversation?

A. No.

Q. All right. Now had you had occasion from time to time to observe the equipment that was operated on the side of the levee down near the canal?

A. I did.

Q. What happened with reference to that equipment as the men came on?

A. As the men came over the levee, they went to the piece of equipment and it stopped.

1013 Q. Well, how did it operate? Did the men stop it or did the equipment?

Mr. Alexander: We object to that form of the question.

Mr. O'Neill: All right.

Q. Just tell the jury what happened.

The Court: Objection sustained.

By Mr. O'Neill: Q. Just tell the jury what happened, as far as you were able to observe what happened with reference to the piece of equipment? Tell the jury what the men did and what happened to the equipment.

A. All I know, it just stopped. I was too far away.

Q. All right. Did the men continue to arrive there?

A. Yes, there was quite a few cars and men arriving.

Q. Did you—could you make an estimate for the jury as to the number of men that finally, when that crowd got there, the number of men that were there?

A. It would be very hard to do, but I would say between three and five hundred.

Mr. FitzGerald: I don't hear you, Mr. Turner.

Can you speak a little louder, please?

The Witness: I say between three and five hun-
1014 dred, I would say somewhere in that neighborhood.

By Mr. O'Neill: Q. All right. You saw the sheriff and Mr. Kellermann go down and talk to Mr. Green?

A. That is correct.

Q. Do you remember what happened next?

A. That is when the other cars started arriving with the other men. How long he talked, I just don't recall.

Q. Now did you have Mr. Terry pointed out to you or his car?

A. No, I didn't.

Q. When you say the other men started arriving, what do you mean by the other men?

A. Well, I imagine it was, whoever they were, laborers or who ever they were.

Q. I see. Would you know whether or not Mr. Green was the first to arrive there?

A. I would think so, yes.

Q. As I recall it, you said that you were about ready to go, and you saw some cars coming up from Granite City?

A. That is correct.

Q. Did you have occasion to observe the kind or make of those cars?

1015 A. No, I didn't.

Q. Or how many were riding in them?

A. No, I don't recall.

Q. Where did the cars go after they parked on the levee? Did they park on the levee or down along the slue road?

A. On the levee.

Q. Did you observe any particular individual get out of them?

A. I did not.

Q. Did you see people get out of them?

A. Yes, sir.

Q. All right. Now when the sheriff and Mr. Kellermann went down to talk to the man, you say later you know to be Jack Green, were other men on the levee at that time that had come in a group from Granite City?

A. They were coming in at the time.

Q. I see. Well, do you know of your own knowledge whether Mr. Green was the first man to come up in a car?

Mr. Stoddart: We object to that.

Mr. Oxtoby: Impeaching his own witness; leading and suggestive.

1016 Mr. O'Neill: I am not trying to impeach him.

Mr. Stoddart: He said he was the first one to arrive. Now he is trying to show he was not.

The Court: I can't hear both of you gentlemen.

Are you making an objection?

Mr. Stoddart: Yes, sir.

The Court: What is the last question? I remember his answer.

(Question read.)

The Court: I think he may answer. Objection overruled.

By Mr. O'Neill: Q. Just whether you know or not.

A. Well, I will say he was in the first bunch of cars that came.

Q. All right. Well now, as I understand it, Mr. Callahan and Mr. Kellermann went down and talked to him.

Was there a group there when they went down and talked to him?

A. There was.

Q. Do you recall at that time, Paul, where the 1017 Terry car was?

A. It was approximately a hundred feet away from where they was talking.

Q. Where was it with reference to where you were standing?

A. I was about half way between.

Q. You were half way between them?

A. Yes, sir.

Q. In other words, the group was on one side of you, and the Terry car was on the other hand?

A. Yes.

Q. What happened after Mr. Callahan and Kellermann talked to the group on which Jack Green was?

A. That is when the big body of men kept coming in, and then—

Q. First of all, did you do anything yourself at that time but stay where you were?

A. No.

Q. What did Mr. Kellermann and Callahan do, if anything?

A. Well, they gradually worked down—I guess as they were talking, towards Mr. Green's car.

Q. Towards the Green car?

A. Yes.

1018 Q. Well, all right. Then what did they do?

A. Well, that is all I know, outside the car left.

Q. Well, did you see them go back to the Terry car?

A. No, nobody went to the car.

Q. Well, then tell us just in your own recollection what you saw yourself there.

A. Well, like I say, there was a body of men, they are milling around there, and as they come down towards Mr. Green's car, I don't know what happened, but just Mr. Green left, and when he left, then the crowd disbanded.

Q. Well now, you say Mr. Green's car. Are you sure you have got the cars right, the Green car or the Terry car?

A. Terry's car, yes.

Q. O. K. Well, as they came back to the Terry car, did you observe any violence?

A. No violence.

Q. What happened when the Terry car left?

A. In a few minutes the crowd dispersed, and everyone went home, I guess.

Q. Did that include yourself, you left too?

A. Yes, we left too.

Mr. O'Neill: You may cross-examine.

1019 *Cross-Examination by Mr. Alexander.*

Q. How long have you been deputy sheriff?

A. Two years and eight months.

Q. How long have you lived in Alton?

A. About twenty-five or thirty years.

Q. Have you ever lived in Granite City?

A. Never have.

Q. What was your business before you became a deputy sheriff?

A. I was in a tavern with another man operating a tavern.

Q. Who was that?

A. E. L. McCracken.

Q. Was that located in Alton?

A. Yes, it was.

Q. How long did you carry on that business?

A. Nine years and four months, I believe.

Q. What was your occupation before that?

A. I worked on a Consolidated Aircraft, in San Diego.

Q. Oh, that was away from this territory?

A. Yes.

Q. About what time would you say you arrived at the Chain of Rocks?

1020 A. Somewhere between ten and ten-thirty, to the best of my recollection.

Q. How far was that from your home in Alton, approximately?

A. Eighteen or twenty miles.

Q. How long did it take you to get down there, just approximately?

A. I would say a half hour.

Q. I understand when you arrived there, you found Deputies Musso and Fricker there, and they were talking to this man Florence, were they not?

A. That is right.

Q. And Florence was introduced to you as a bodyguard who had accompanied Terry, wasn't he?

A. I don't recall whether he was as a bodyguard, but he was, I should say he was armed.

Q. Did you sit in somebody's car there for some time?

A. We did.

Q. Who sat in there with you?

A. Musso, Fricker and Florence.

Q. Now was it at that time that Florence told you he was armed?

A. Yes.

Q. Did you see any firearms?

1021 A. Yes.

Q. Who had them?

A. We all had firearms, and so did Florence.

Q. And Florence?

A. Yes.

Q. Did you see the other man, Mr. Zinn, or did you hear his name?

A. No.

Q. Now at this time when you were sitting in this car, this piece of equipment was operating, was it not?

A. It was.

Q. How far away from where you were was it?

A. Well, it was a good hundred yards, I would say.

Q. Did anybody point the Terry car out to you?

A. I don't recall whether they did or not.

Q. Well, how far would you say it was from the car in which you were sitting—well, I will withdraw that.

You do know now what car, I mean when I say the Terry car—

A. Yes, sir.

Q. Now how far was it from the car in which you were sitting?

A. I just don't recall, but I would think around
1022 fifty to sixty feet, somewhere in that neighborhood.

Q. Were there any cars in between the car in which you were sitting and the Terry car?

A. No, not that I recall.

Q. Did you see any truck around there?

A. It seems like there was a truck came in there and left while we was there.

Q. Wasn't that a truck that was carrying in the body of the truck a tractor, and was dragging some other equipment behind it, and didn't it come up the levee road going north and stop when it got in that crowd of men?

A. I don't recall it.

Q. You don't recall that.

Now you did say you do remember something about a truck?

A. It seems as if there was an army engineer's truck or something came in there, I believe, and left. I don't think it even came in to where we was at; somewhere in the vicinity of where we was at, right in the neighborhood.

Q. Did you know the driver of that vehicle?

A. No.

Q. Where did he stop?

1028 A. He stopped some place there in reference to where my car was parked, and then left, to the best of my recollection.

Q. Well, as a matter of fact, didn't he drive in there and drive up in the immediate vicinity of the Terry car, and then stop?

A. I don't recall it.

Q. You don't recall that?

A. No.

Q. Do you remember Mr. Fricker getting off of the car—out of the car in which you were sitting with him and going up to another car that drove onto this road, and you

remained seated in the automobile with Musso and Florence?

A. No, I didn't.

Q. You don't remember that?

A. No.

Q. Now then, Callahan the sheriff, and another member of the sheriff force, Kellermann, arrived?

A. That is correct.

Q. And after they had been there a little while, this group of men with Mr. Green drove up, and the men got out of the cars and came up and joined Callahan?

1024 A. That is right.

Q. Now at that time you were how far from that group of men?

A. I was quite a little distance from them.

Q. Could you hear what they said?

A. No.

Q. Now in that particular group of men, how many would you say there were, that first group that arrived there?

A. I just don't have any idea, maybe twenty.

Q. Now then, shortly after that, more and more cars arrived?

A. That is correct.

Q. And parked along the road, and the men came up to where the Terry car was, in the vicinity of the Terry car, and the car in which you were seated, and this place where Mr. Callahan was.

A. They were in the vicinity, were practically all over the levee where we was at.

Q. Now at about that time didn't you see a group of men go down the slope of the levee to the berm where this piece of equipment was, and surround it?

A. I did.

1025 Q. About how many men were in that group?

A. I wouldn't have any idea.

Q. At that time, did the operator of that piece of equipment get off the equipment, and the work cease?

A. The work ceased. I never seen him get off the equipment.

Q. You didn't see him get off?

A. No.

Q. I suppose you didn't see him to recognize him after that.

A. No.

Q. Now did you see Mr. Green walk down toward the Terry car?

A. At the time I didn't know who he was.

Q. You didn't know who he was, but now recognize who it was, it was Green?

A. Yes.

Q. Was he accompanied by others of these men?

A. What? By who?

Q. As he walked down there, did other men come with him?

A. Yes.

Q. Down towards the Terry car?

1026 A. Yes.

Q. And this crowd, they were surrounding the Terry car, were they not?

A. Not too much around the car.

Q. Well, how many would you say were grouped around that car?

A. Well, as he was coming towards the car, I would say there was only a few around the car.

Q. But they increased as Mr. Green approached?

A. That is right.

Q. As he approached the Terry car the crowd increased?

A. The crowd increased.

Q. Now you were some fifty or more feet away at that time, do I understand?

A. As they—I was a little closer to them, as they got to where I was standing, the car was on the other side of there.

Q. How far were you from the car?

A. Approximately fifty feet.

Q. Then of course Green got closer to you as he approached the car, and then he began to go further away from you as he neared the car?

A. I think they stopped before they got to the car.

Q. About how far from the car?

1027 A. I would say maybe thirty or forty feet.

Q. Did some talk go on then between Terry and Green?

A. Not that I recall.

Q. You don't remember any talk between these men?

A. No.

Q. Do you remember hearing some man in the crowd about that time saying, "Terry ought to have his head smashed in!"?

A. Yes.

Q. Did you know who that individual was?

A. No.

Q. Mr. Turner, are you familiar with the levee road all the way from the locks up to the north end of the canal?

A. The first time I was ever on it.

Q. That was the first time?

A. Yes.

Q. Then I take it you are not familiar with the whole length of that road.

A. No.

Q. But from where you were standing, where this event took place, how far was the canal approximately from you?

A. Well, that would be hard for me to say, a hun-

1028 dred yards maybe.

Q. At that point at least the levee runs along the side of the canal?

A. Back off of the canal.

Q. Yes, back off, there is a slope, and then a level place they call the berm?

A. That is right.

Q. And then the canal proper?

A. Yes.

Q. Mr. Turner, some time following this incident, did you meet Mr. Granfield who sits back here (indicating), an FBI Agent?

A. I did.

Q. Did he interview you on this same subject matter?

A. He did.

Q. Was that at Alton, that he came to see you, or do you remember?

A. I think it was at Alton police station, if I remember.

Mr. Alexander: I think that is all.

Mr. O'Neill: That is all.

The Court: Call the next witness.

(Witness excused.)

1029 CARL LOMAX, called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. O'Neill.

Mr. O'Neill: Here is one. It is not a marked copy.

Mr. Alexander: I think we can agree it is the same book.

Mr. O'Neill: How do you want us to refer to that?

Mr. Alexander: Why don't you just call it Government's Exhibit 8?

Mr. O'Neill: Defendants' Exhibit 7, I think we had it marked, both yesterday.

Mr. Alexander: O. K.

By Mr. O'Neill: Q. Will you state your name, please?

A. Carl Lomax.

Q. Where do you live?

A. At Edwardsville, Illinois.

Q. Carl, will you talk loud enough so the jury can hear you as well as the rest of us, because this court
1030 room is a little bit difficult for people to hear in.

A. Yes.

Q. What is your occupation?

A. I am a member of the firm of S. M. Wilson & Company, general contractors; and I am also secretary-treasurer of the Southern Illinois Builders Association.

Q. Where is the S. M. Wilson & Company, general contractors, in business?

A. Granite City, Illinois.

Q. What is their general line of business?

A. General construction.

Q. What is the Southern Illinois Builders Association?

A. It is a group of general contractors in Southern Illinois.

Q. Do you have any territorial limits or boundaries?

A. Yes, we do.

Q. What are they?

A. Well, we have jurisdiction from our national office for 39 counties in Southern Illinois.

Q. Are Madison and St. Clair counties in that Southern Illinois district?

A. Yes, they are.

1031 Q. And the other 39 counties lie south and east of there?

A. That is right.

Q. By your national organization, to what do you refer?

A. The A. G. C.—the Associated General Contractors of America at Washington.

Q. Associated General Contractors of America?

A. That is right.

Q. That is a national organization?

A. Yes, sir.

Q. With headquarters in Washington, D. C.?

A. Washington, D. C.

Q. Well, just very briefly, what is the purpose of this organization?

A. It is an association of contractors for forming labor contracts with various organizations—labor organizations in the district.

Q. What sort of district—I mean what sort of contracts?

A. Working conditions and scale of wages in the basic contract that affects the construction industry.

Q. Beg your pardon?

A. That affects the construction industry.

Q. By "working conditions" you mean what?

1032 A. The working conditions that the men are bound to abide by on the jobs.

Q. That is the working men, is that right?

A. That is correct.

Q. Then does that also cover the treatment and the wages and working conditions as they are to be paid or furnished by the employers?

A. That is right.

Q. I will hand you a book marked for identification as Defendants' Exhibit 7, and Government's Exhibit 8, and ask you what that is.

A. That is a copy of the contract between the Southern Illinois Builders Association and the Building and Common Laborers Local No. 397, Granite City, Illinois.

Q. When is that dated, Mr. Lomax?

A. This was a contract that was in force from January 1, 1947, until January 1, 1948.

Q. Was a new contract entered into in 1948?

A. We have had a contract—not a written contract,—we have had a verbal contract with this organization since 1945 or 1946.

Q. Well, let me ask you in order to shorten time: Isn't this contract one that has been in force between your
1033 organization and Local 397 since 1947 with the exception of rates of pay?

A. That is right, the only exception is the rate of wages.

Q. In other words, by oral agreement it has been extended from year to year?

A. That is right.

Q. Was this agreement in effect in April of 1953?

A. With the exception of wages, yes.

Q. Are you familiar with the area of the levee along the Chain of Rocks Canal, within a few miles one way north or south from the Chain of Rocks canal bridge?

A. Yes, I am.

Q. In what county is that area?

A. In Madison county.

Q. Is that area in that county within the territorial limits of the area affected by this agreement, referring to Defendants' Exhibit 7?

A. It is.

Q. You know the defendant Jack Green here?

A. Yes, I do.

Q. How long have you known him?

A. Approximately thirty years.

1034 Q. You don't know how long he had been business agent for Local 397?

A. No, I don't.

Q. Was he business agent for Local 397 in April of 1953, to your knowledge.

A. Yes, he was.

Mr. O'Neill: I would like to offer this again.

Mr. Alexander: Do you expect to offer the contract or some specific portion?

Mr. O'Neill: Yes, I will mark them for you.

Now, your Honor, the defendants would like to offer in evidence that portion of Government's Exhibit 8, and Defendants' Exhibit 7, which I have had marked, with a line on the side on page 5, page 6 and page 9.

The Court: Any objection?

Mr. Alexander: We wish, your Honor, to ask a few questions first.

The Court: You may do so.

1035 *Cross-Examination by Mr. Alexander.*

Q. Now your organization is a voluntary organization of construction contractors who joined together for mutual benefit?

A. You are asking me that question?

Q. Yes.

A. Yes, sir, that is right.

Q. And among your other jobs—among your other objects is to negotiate in behalf of the members of your organization with various labor unions and crafts to agree on working conditions, pay, and things of that kind. Is that right?

A. That is correct; yes, sir.

Q. Is Mr. Terry operating the Terry Engineering Company of the State of Missouri, is he a member of your organization?

A. No, sir.

Q. Has he ever been, as far as you know?

A. No.

Q. Is Mr. Wright, who operates the Midway Construction Company, I believe it is—No, Midway Excavating Company—is he a member of your organization?

1036 A. No, sir.

Q. Or has he ever been?

A. No, sir.

Q. Now this contract was negotiated between representatives of your association and representatives of Local Union No. 397?

A. That is correct.

Q. Were you a party to the negotiations?

A. I was.

Q. Did Mr. Terry participate in those negotiations?

A. I don't know Mr. Terry.

Q. You never heard of him?

A. Never heard of him.

Q. Mr. Wright did not participate in those negotiations?

A. I don't know Mr. Wright either.

Q. And they are not parties to this contract?

A. No.

Q. Your members in Madison county, Illinois, employ all your laborers from Local 397, is that right?

A. Well, I couldn't say that is entirely right, they are supposed to.

Q. You are supposed to?

A. That is right.

1037 Q. In other words, your members recognized what might be called a closed shop, as far as employment of laborers in that particular area of Madison county in so far as Madison county lies in the jurisdiction of Local 397?

A. That is right.

Mr. Alexander: We object to the offer of the exhibit as immaterial to the issues in this case, and not binding upon the parties who are involved in any way in this litigation. It is a private contract.

The Court: May I see it?

(Defendants' Exhibit 7 handed to the court.)

The Court: Well, gentlemen, I agree with you, it hasn't the power to control the two contractors in this particular case; but I cannot help but believe that it might be material, and is material in regard to whether or not there was any of the intent or practice in that particular community.

I think this jury has a right to consider the intent
1038 of the defendants, and I think for that purpose it is proper. They are not bound, it is true, the contractors in this case are not bound by an agreement that prevailed in this particular locality.

This, as I understand it, is an agreement with the Southern Illinois Builders Association.

How many members have you in that?

The Witness: Forty.

The Court: Forty?

The Witness: That is right.

The Court: One of these defendants, I understand, lives in Missouri, one of the prosecuting witnesses, and the other lives in Illinois.

The Illinois man is not a member.

The Missouri man is not a member.

They hence are not bound, in my opinion, on this contract; but I think it is material from the viewpoint of the intent or the practice in this particular community.

1039 For that reason, the objection will be overruled. It may be admitted.

(Whereupon said DEFENDANTS' EXHIBIT 7 was received into evidence.)

Mr. Alexander: We will have further questions, your Honor.

The Court: Yes, go ahead.

Mr. Alexander: May I have the exhibit, please?

(Defendants' Exhibit 7 handed to Mr. Alexander.)

Mr. O'Neill: Mr. Alexander, I asked him to replace the lost copy of Exhibit 8.

Mr. Alexander: We will find the other, no doubt.

The Court: For purposes of this record, you ought to introduce, upon finding the copy, the original copy. Should you not?

Mr. Alexander: We will. We don't contend it is not a true copy, your Honor.

The Court: It is just lost temporarily.

1040 Mr. Alexander: There won't be any trouble about that. If we don't find the other one, we will re-mark this one.

Mr. O'Neill: All right.

The Court: Go ahead, Mr. Alexander.

Mr. Alexander: Yes, your Honor, just one moment, please.

Cross-Examination (Continued) by Mr. Alexander.

Q. Now in this contract, Defendants' Exhibit 7, Government's Exhibit 8 for identification, your members agree that when doing construction work in Madison county, the work of this nature, tenders, hod carriers and helpers, for bricklayers, masons, plasterers, millwrights, carpenters, plumbers, steamfitters, operating engineers, finishers, civil engineers, and other building construction crafts where semi-skilled and unskilled labor are connected therewith, that for that kind of work you employ laborers from Local 397?

A. Where labor work is involved, yes.

Q. With all that kind of work.

Now then, you also agree that like labor would be 1041 employed from this union or from other local unions of workers who were given the authority to be employed in that county to carry on the work of signaling, hooking and unhooking, flagging, spotting for all bulldozers,

cranes, trench machines, derricks, trucks, Hy-lifts, tractors, and carrying of coal and other fuels, deckhand on barges, and other river equipment, men on foot valves, on pumps and other powerdriven machinery where labor work is involved?

A. That is correct.

Q. This contract does not cover, does it, purely maintenance work?

A. Yes, it does.

Q. It does?

A. Yes.

Q. All of your members are engaged in construction work, aren't they?

A. Well, we all do a certain amount of maintenance work.

Q. Have you had any—do you know of any of your companies that did any maintenance work on the levee along the canal, purely maintenance work?

A. No.

Q. Now that part of this contract which I read to
1042 you does not require you to have a laborer with every machine of the character of a dozer, does it?

A. No, it does not.

Q. It simply means when you do employ a laborer to do work of these particular natures in connection with a dozer or a caterpillar, that you employ the man fr[illegible] his union?

A. Where the labor work is involved, that is correct.

Mr. Alexander: I think I have covered the parts you wanted in there.

Mr. O'Neill: Yes, sir.

The Court: Is that all of this witness?

Mr. Alexander: That is all.

Mr. O'Neill: I just wanted to ask him a couple of questions. I think it arose out of a misunderstanding.

Q. Mr. Alexander ask you if the contractors in Madison county dealt only with Local 397 when they employed laborers.

There are other laborer locals in Madison County who also come under the terms of similar contracts to 397?

A. Oh, yes, a great number of them.

Q. In other words, a contractor in Alton would
1043 probably deal with the Alton laborers local in Edwardsville, Collinsville, and so forth, is that right?

A. That is correct.

Q. Mr. Alexander had reference to a closed shop.

I will ask you if since the Taft-Hartley Act you have operated on a closed shop or union shop agreement.

A. The stipulation in all of the contracts now is for a union shop.

Q. What is the difference, Mr. Lomax?

A. Well, I don't know as I know enough about the Taft-Hartley Law to answer that question.

Mr. Stoddart: Objection.

Mr. Alexander: If he doesn't know it is apparently objectionable.

The Court: Objection sustained.

By Mr. O'Neill: Q. Your organization, does it have a contract also with the operating engineers?

A. Yes, we do.

Q. Do you know whether they have one with Local 520 of East St. Louis?

A. We have one with the local in East St. Louis, I don't know as I could remember the number of the local.

1044 Mr. O'Neill: That is all.

The Court: Is that all?

Mr. Alexander: I think that is all.

The Court: Call the next.

(Witness excused.)

1045 GEORGE W. LONGFELLOW, called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. FitzGerald.

Q. State your full name, sir.
A. George W. Longfellow.
Q. Where do you live, Mr. Longfellow?
A. 2706 North Street, Alton, Illinois.
Q. What is your business?
A. Sir?
Q. What business are you in?
A. Grading contractor.
Q. How long have you been doing work as a grader?
A. Eighteen years.
Q. Did you do any work on the Chain of Rocks levee?
A. Yes.
Q. Well, do you remember when you started?
A. When we started?
Q. Yes, sir.
A. June, 1953.

Q. Now Mr. Longfellow, just where was that work
1046 that you did located on the canal?

A. Where was it located?
Q. Yes, sir.
A. Well, on the east side of the canal from the locks, completely north to the end of the levee.
Q. Well, that included all of the space between where the principal houses on the locks themselves are which operate the gates and the canal bridge on the south side of the bridge, did it not?
A. No; that was about half of it on that side.
Q. Yes, sir. Now from the north side of the bridge, how far north does the canal run?

A. Oh, I would say in the neighborhood of two and a half.

Q. It runs up to about Mitchell, does it not, opposite Mitchell?

A. No, it runs to the end of the Cahokia canal.

Q. I think that is about two and a half, three miles.

A. I would say it was eight miles above Mitchell.

Q. Oh, eight miles, it is?

A. Yes, sir.

Q. I thought it went down to Mitchell.

Mr. Longfellow, did you start grading there?

A. Did I what?

1047 Q. You started the grading at what point, do you recall?

A. Yes, we started down at the locks.

Q. Then you were working north toward the canal bridge and beyond that?

A. Yes, sir.

Q. Now at the time you started grading there, do you recall the condition of the levee on the east side of the canal with reference to whether or not there was grass and greens—grass and weeds upon it?

A. Yes, sir, there was grass about—well, from 12 to 24 inches high on the levee and berms, and when you go down the bermslope, there is usually weeds. They were, I would say, 6 and 8 feet high.

Q. Sir?

A. I would say those weeds were 6 and 8 feet high, big coarse weeds.

Q. Yes. Did you do work on both sides of the levee, the east and west sides?

A. Yes, sir.

You mean both berms?

Q. Sir?

A. You mean both berms?

1048 Q. Well, were you associated with any other firm at the time that this work was being done?

A. No, sir.

You mean, was there anyone else on that job?

Q. Yes, sir.

A. Yes, there was another firm that had two dozers on the job.

Q. What other firm was it?

A. Harry Sexauer of St. Louis.

Q. Did you work in conjunction with the work that he was doing?

A. We usually haul the dirt over, and he smoothed it up afterwards with a dozer.

Q. Did he cover the same areas that you had described to the jury in his work?

A. Yes.

Q. So that as I understand it, you covered all of the east side of the levee with your equipment, and he also worked all of the east side levee?

A. We were only filling. We were only filling washouts and ditches.

Q. So he came along and evened off the earth after you had brought the earth to the washouts and the 1049 ditches, is that right?

A. That is right.

Q. How many pieces of equipment and what equipment did you use on that work?

A. I had four scrapers and tractors.

Q. Did you employ laborers in connection with it?

A. I did, yes.

Q. How many did you have?

A. I had one laborer.

Q. What did those laborers do?

Mr. Alexander: Now if the Court please, we are going to object to this as immaterial, irrelevant.

The Court: Objection is overruled.

Mr. Alexander: Here is something happening in June of 1953 after this thing was all over.

The Court: That is right, the jury may consider that as a difference of time.

Mr. O'Neill: Pardon me, your Honor. I thought your Honor had finished?

The Court: Go ahead.

Mr. FitzGerald: What? What did the laborers usually do?

A. The laborers usually went along and found
1050 these gulleys which were to be filled, and found where the barrow pits were, see there were no holes in there. If we needed a bucket of water for a tractor or anything like that, they would make themselves useful in general.

Q. Do you know what spotting is?

A. Yes, sir. He was a spotter, that is what they call it.

Q. Describe to the jury, and tell them why that is required, if you please.

A. Well—

Q. Tell the jury why you have a spotter.

A. That the Government required it.

Q. Not the Government, why you as operators, as the contractor would have a spotter.

A. So he could find those ditches.

Q. I am sure the jury cannot hear you. I cannot, Mr. Longfellow.

Will you speak a little louder?

A. I will try to.

What was your question?

Q. Why did you have a spotter? Why was a spotter needed? Why would you employ one?

A. To find those ditches because that man couldn't
1051 see them far ahead of him.

Q. You mean the man operating the machine?

A. That is right.

Q. How far ahead of the machine would a man be able to see, assuming the grass was not 14 to 20 inches high?

Suppose it were 5 or 6 inches high, would he be able to see fifty feet ahead of him whether there were deep gulleys around him?

A. Well, he would be able to see forty or fifty feet.

Q. Forty or fifty feet?

A. Yes, sir.

Q. Would he then be able to tell the depth of holes that might be there?

A. No, sir.

Q. What would happen if he did not know that a hole was there and it were a deep hole, two, three feet deep?

A. Well, you would fall off in it.

Q. What would happen to the machine?

A. Well, I don't know if anything would happen to the machine, they are pretty tough.

Q. Sometimes it would turn over, do they not?

1052 Mr. Alexander: To which we object as leading.

The Court: Objection sustained.

Mr. Alexander: Why don't you let the witness tell it?

The Court: Objection is sustained.

By Mr. FitzGerald: Q. Mr Longfellow, had you employed laborers in this area before in connection with the operation of the caterpillar machines that you owned?

A. Oh, yes.

Q. Had you employed laborers from the union of which Mr. Green is the business agent in Granite City?

A. Yes, sir, on lots of occasions.

Q. How long have you known Mr. Green?

A. I met Mr. Green twelve years ago.

Q. Has Mr. Green at any time ever insisted that you employ a laborer with each piece of equipment?

A. No, sir.

Q. Have you before the month—about the month of April, 1953, employed laborers through Mr. Green's union in Granite City at a time where he would have one laborer with one—with more than one piece of equipment?

A. On many occasions, yes.

1053 Q. Now do you know, Mr. Longfellow, who had done work just prior to the time that you began this grading work on the levee there?

A. I don't understand that question.

Q. Do you know what contractors had worked upon that grading work on the levee on both sides of the canal just before you and Mr. Sexauer started your work?

A. No, I did not know who done it, but I heard there was another contractor in there.

Q. Well, I mean whether you knew the contractor personally. Did you know the names of the contractors?

A. Terry; Mr. Terry.

Q. Did you know the name of any other?

A. Sir?

Q. Did you know the name of any other contractor?

A. Yes, Gorham Construction worked in there one time before.

Q. They were working while you were working, were they not?

A. No, sir.

Q. They were not?

A. No, sir.

Q. Was the Wright Midway Construction Com-
1054 pany—have you heard that name before you started this work?

A. I wouldn't know that, sir.

Q. You don't remember that name?

A. Yes, I know the name of Wright.

Q. But you had not heard that they had done work?

Mr. Stoddart: Objection to the question as repetitious.

The Court: Sustained.

Mr. FitzGerald: I want to clear it up, Mr. Stoddard. You may cross examine.

Cross-Examination by Mr. Alexander.

Q. You had four scrapers?

A. Yes, sir.

Q. Working on this job?

A. Yes, sir.

Q. How much time did you spend down on the job yourself?

A. Personally?

Q. Yes.

A. Maybe an hour a week.

Q. Have you had any contract—any maintenance 1055 contract just like this before—before this one?

A. Many times.

Q. On the levee?

A. Yes, sir, at different places.

Q. With whom did you have such a contract?

A. Well, I had as a subcontractor under Madison Construction Company.

Q. Of what company?

A. Madison Construction Company.

As a subcontractor for Madison Construction Company, Wood River Drainage and Levee District, Wood River, we built about five out of the ten miles they built there on the levees.

Q. Now you employed four scrapers on this particular job?

A. I employed them?

Q. What?

A. No, I had them rented to the Government on that particular job.

Q. This was an equipment rental?
A. That is right.
Q. Contract?
A. With the Government.
Q. And there were four of them?
1056 A. Yes, sir.
Q. And the work was done according to the directions of the engineer in charge?
A. That is right.
Q. Who was that engineer?
A. I don't remember his name.
Q. Was it Mr. Lehmann?
A. What was the name?
Q. Lehmann.
A. That was the man, Mr. Lehmann, Karl Lehmann.
Q. Now will you describe just how the scrapers did this work, where it was done?
A. The scrapers would pick up the dirt in the barrow pit, which was usually over on the inside of the levee berm, haul it completely across the levee, or wherever these ditches were to be filled, and dump it in these ditches.
Q. Now this was filling ditches?
A. That is right.
Q. In the levee proper or the berm?
A. Mostly berms, there were some levee proper there too.
Q. Do you remember particular places in the levee where the ditches were?
1057 A. Do I remember particular places?
Q. Yes.
A. Yes, very many of them.
Q. Was this condition with respect to ditches, was that approximately the same along the whole length of the levee, or was it in limited areas?

A. Well, it was—the ditches were mostly on the berms, erosion.

Q. Well now, can you give us an idea how deep these ditches were?

A. Some were deeper than the others. They would run from 6 inches to 6 feet.

Q. Six feet deep?

A. Oh yes, some of them.

Q. Now the barrow pits?

A. The barrow pits—

Q. The barrow pits were on the east side of the levee, of the east levee, were they not?

A. That is right.

Q. So that your scoops had to go down to the barrow pits down the slope of the levee?

A. Yes, sir.

Q. Then get the dirt, bring it up to the top of the levee, and down the reverse slope to the berm?

1058 A. That is right. This levee has a berm on both sides.

Q. Your work was not leveling off the slope of the levee?

A. No, sir.

Q. You recognize this as a map of the area?

A. Yes, sir.

Q. Could you point out specific areas where these ditch conditions prevailed?

A. They usually would be down on these berms—these berm slopes (indicating). They were all along it.

Q. Well, were they frequent or scattered?

A. Well, there might be a bunch together, and you might go along for 400, 500 feet before you found another bunch or any more.

Q. Now this was in the summer time that you did this work?

A. Yes, sir.

Q. Your work was not to take a dozer with a blade and scrape top soil off the berm, push it up the levee and then back-blade it down, that was not your work?

A. No, sir.

1059 Q. Did you have a contract with Local 397, had you had?

A. I did not, no.

Q. But you had an oral or tacit agreement with them to employ their labor?

A. Yes, sir.

Q. And you employed their labor on this job?

A. I did, sir.

Q. And always do when you are in their jurisdiction?

A. Sir?

Q. And always do when in their jurisdiction?

A. That is right.

Q. Now the men, in bringing the dirt up, would drive up the levee perpendicular to the levee, I presume, would they not, to the top of the levee and then down?

A. Usually.

Q. And as they found a ditch, they would dump the dirt in there?

A. We try not to make any more road crossings than we have to.

Q. What?

A. We tried not to make any more road crossings across the levee than we had to.

1060 Q. They were necessary, however, to get that dirt down on the berm?

A. That is right.

Q. This was putting dirt down on the berm?

A. Yes, sir.

Q. Did your contract involve seeding?

A. No.

Q. Did your contract involve removing these weeds?

A. Removing the weeds?

Q. Yes.

A. Only on the barrow pits.

Q. Is it not a fact that every effort is made to eradicate weeds entirely from levees?

Mr. FitzGerald: Just a moment, if the Court please. That is not cross examination, whether that is the policy of the Government or not, it is immaterial.

Mr. Alexander: It is not a question of policy. I have a right to show this man's knowledge of it.

The Court: If he knows, it is all right, he may answer.

The Witness: What is the question?

By Mr. Alexander: Q. Is it not the policy or in
1061 connection with levee building, is not every effort made to keep the weeds out and eradicate them?

A. That is right, it is. You try to get a good sod.

Q. The heaviest weeds, you are talking about, were over on the barrow pits?

A. That is right.

Q. And that is beyond the berm?

A. Yes.

Q. How deep were those barrow pits?

A. Oh, some of them were as much as 16 feet below the land side berm.

Q. I'm not sure I understand. How far below the ground level at the place where the pit was, how deep would it be?

A. Below the ground level?

Q. Yes.

A. Well, you are talking about the original ground level before the levee was built?

Q. No. If I would up to a barrow pit as it was at the time you were working there, and I would come to the edge of a barrow pit. How deep would it be down there?

A. They were not deep.

1062 Q. Well, how deep?

A. Well, there was no dirt taken from those barrow pits before.

Q. I am not asking you that. There were barrow pits there—

A. I told you about 16 feet below the berm—land side berm.

Q. I thought that was too deep. Now let's find out how deep would it be standing right on the edge of the barrow pit, how far down?

A. Well, the barrow pits as a rule were kept away from the levee berm slope.

Q. I realize that, they are kept away from the berm.

A. When you are getting down to the berm slope, it is practically just as level as it is on this floor.

Q. You mean there was no hole there?

A. No, sir.

Mr. Alexander: Your Honor, I wonder if we might have a short recess. We might have one or two more questions.

The Court: All right, you may retire for ten minutes.

1063 (Recess taken.)

The Court: Any further cross-examination?

Mr. Alexander: Yes, your Honor.

Q. Well now, Mr. Longfellow, this dirt that you got to fill these ditches was obtained from the fields over beyond the levee on the land side of the levee.

A. Yes, sir.

Q. Now it was over there that you ran into this week condition, was it not?

A. Yes.

Q. The levee proper was seeded and had grass growing on it?

A. Yes.

Q. At that time you worked between June and approximately what time?

A. Four months, about eight days in June, thirty days in July.

Q. Well, it was through the summer?

A. Yes, sir, through the summer months.

Q. And there was a heavy growth out there in the fields of wheat?

A. There was.

Q. But on the levee slope, the canal side and on the berm, it was grass; and how high would you say it 1064 was?

A. At that time it was around 20 to 24 inches.

Q. Have you been at similar places on the levee in, say, March and April?

A. I have.

Q. Approximately how high would you say the grass would be?

A. From 6 to 12 inches.

Q. Now you had these four pieces of equipment and one laborer?

A. Yes.

Q. To attend to it?

A. Yes.

Q. And you had these weed conditions to contend with?

A. Yes.

Q. This laborer, taking an average day, how much actual working time would he spend out of a day?

A. How do you want to define "working time"?

Q. Well, I mean when he spent the regular working day there.

A. Well, he would spent eight hours there.

Q. He would spend eight hours there?

A. That is right.

Q. Now of that time, how much time would he de-
1065 vote to actual labor work, would you say?

A. Well, on some days it would be more than others, but an average of about one hour a day.

Q. Now you had operating engineers on this equipment operating it?

A. Yes.

Q. Where were your engineers from—what local were your engineers employed out of?

A. Local 525, East St. Louis.

Q. Do you know of any rule that the engineers had requiring that a laborer be employed with every piece of equipment of that kind.

A. It is not their rule in their rule book.

Q. Nothing in their rule book requires a laborer on these machines?

A. No, sir, on the machines themselves is their award.

Q. That is recognized, that jurisdiction, as being their work, operating the machines?

A. Yes, including the repair of those machines.

Q. How about maintaining the oil and gas supply?

A. Well, if it is supposed—if it is carried in there to them, you naturally get a laborer to carry it.

Q. But normally for a day's work, the supply in
1066 the machine will carry it through a day, will it not?

A. Usually the first task of a morning, we usually haul—pull a big tank with a thousand, fifteen hundred gallons out there, and the first task of a morning is to fill all of the machines that are working. The laborer usually pumps it in for them. The operator stays on his machine and handles the nozzle end of it.

Q. What will the usual dozer or tractor on that kind of a job carry?

A. How much?

Q. How much gasoline.

A. About sixty gallons.

Q. Will that carry them through a normal day?

A. Yes.

Q. And the same way with oil supply?

A. Oil is usually checked twice a day. The operator does that.

Mr. Alexander: I think that is all.

1067 *Redirect Examination by Mr. FitzGerald.*

Q. You said the engineers union in East St. Louis of 525. Are you mistaken about that? Was it not 520?

A. It could have been 520.

Q. You are not certain about the number?

A. Yes.

Mr. FitzGerald: I think that is all.

The Court: Call the next.

(Witness excused.)

1068 HARRY LESTER SEXAUER, called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. FitzGerald.

Q. State your full name, please.

A. Harry Lester Sexauer.

Q. Where do you live, sir?

A. Sir?

Q. Where do you live?

A. St. Louis, Missouri.

Q. What is your business?

A. Well, I am a—I would say a grading contractor.

Q. How long have you been a grading contractor, Mr. Sexauer?

A. Well, about a year and a half.

Q. Prior to that time, what did you do?

A. I had been an operator.

Q. Of what kind of machines?

A. Of earth-moving equipment.

Q. Sir?

A. An operator of earth-moving equipment, dozers.

Q. You used the caterpillar track machines?

1069 A. That is right.

Q. How long have you been familiar with their operation and use?

A. Well, I would say twelve years.

Q. Are you familiar with the canal, the levees on each side, at the Chain of Rocks, both above and below the Chain of Rocks locks in Madison county outside of Madison county?

A. Well, yes. I had a contract over there last year.

Q. Do you know just when that contract was entered into by you with the Government?

A. Well, the contract was entered into about the 17th of June, and we started to work sometime right after the 20th.

Q. Of 1953?

A. 1953.

Q. Where was the work that was covered by your contract, what territory on the prbject?

A. Well, we worked the east side of the canal from the locks to the mouth of it.

Q. How far was that approximately?

A. Oh, I would say five or six miles.

Q. Now that is on the east side of the canal, is it?

A. Yes, and we worked the west side from the

1070 mouth back to the bridge.

Q. To the bridge over the canal?

A. Yes, sir.

Q. Just what work was it that you did on that job?

A. Well, that job was letting two contracts, one for scrapers and one for dozers.

I had the dozer end of it.

Q. Well, now will you explain to the jury just what you mean by a dozer, is that what is commonly called a "bulldozer"?

A. That is right.

Q. What type of work were you doing when you were using those dozers?

A. Well, the scrapers in some instances would fill erosion ditches, and the dozer would come along, and we will say, finish it or scour it.

Q. Level it off?

A. That is right.

And there is also places where the dozer would pick up the washed-out dirt from the toe of the berm and bring it back into the ditch.

Q. Now Mr. Sexauer, who was it that operated the scoops that brought that dirt up where the dirt was
1071 necessary to be brought to fill up the erosion ditches?

A. Well, the large ditches—when I say large, they run from—well, they would vary maybe from five loads to ten loads, and a load is about—I believe that contract called for 8-yard scrapers. George Longfellow had that end of it.

Q. Eight yards?

A. At a load, yes, sir.

Q. Yes, sir, so that if there were five yards, there would be forty cubic yards of dirt dumped in the ditch?

A. Well, approximately 30 yards, that is 75 percent of—

Q. Of the capacity?

A. That is right.

Q. Mr. Sexauer, who was it that was handling the scoops on the job prior to the time that you came along with your dozer on that particular contract job?

A. Well now, you mean at that particular letting?

Q. Yes, at that time.

A. Well, as far as I know, at the time that I worked over there, Longfellow was the only one that had any scrapers on there.

1072 Q. Were they scrapers?

A. Well, scoops or scrapers, whatever you want to call them.

Q. What do you call them, I don't know anything about them.

A. Well, you can call them both.

Q. Both?

A. Yes.

Q. Well, when he was hauling the dirt up, did he scoop out of the barrow pits?

A. Out of a barrow pit, yes, sir.

Q. And he would bring that dirt over to your side or the side of the levee where you expected to fill the ditches or the erosion, is that right?

A. That is right.

Q. Then you came along and finished the job of leveling off so that it would get even?

Mr. Alexander: Object to the leading of this witness. He is your witness.

The Court: Yes.

Mr. FitzGerald: I understand, but it seems to me we would save a lot of time if you stopped objecting.

1073 The Court: It is a leading question. Objection sustained. Go ahead.

By Mr. FitzGerald: Q. What did you do when the dirt was dumped by Mr. Longfellow?

A. Well, they would put it into the ditch; if they couldn't dump it into the ditch, down the grade, and there is places where which you couldn't at water's edge, and whatnot, and you would come along and smooth it out, I

would say, with you want to call it smooth it out or grade it off; and there is—well now, I had one machine working on the river side of the levee doing that, and I had one machine working right across the levee, across the levee cleaning out the berm, the toe of the berm which was eroded, and that particular machine would back out into the flat and pick up the soil which had been washed out off these ditches, and off the slope, and bring it back into the ditch.

Q. What was the difference in elevation of the ground on the berm with reference to land that was immediately east of that of the east side of the levee?

A. Well, the toe of the berm runs about 3-to-1 slope.

1074 In other words, a foot of rise to three foot of it.

Q. Approximately how long was the slope distance from the top of the berm to the ground?

A. It would vary. I would say from 40 to 60 feet.

Q. Now did you employ any laborers on this job?

A. Sir?

Q. Did you have any laborers working on this job?

A. I had one.

Q. And you had two machines working?

A. I had two machines.

Q. Well, where was that laborer obtained from?

A. Well, it was obtained out of the local at Granite City.

Q. Was that Local 397, do you know?

A. Well, the number of the local I don't know definitely.

Q. Wasn't it the local with which Mr. Green the defendant here is connected, wasn't it the local?

A. That is right.

Q. Have you known Mr. Green for some time?

A. No, I met Mr. Green today.

Q. Have you ever employed laborers from that local before this incident?

A. No.

1075 Q. Had you ever done any work prior to that time upon this levee?

A. No.

Q. Have you ever done any work in that area prior to this time?

A. No.

Q. Mr. Sexauer, just what work was there for the laborer to do upon that job?

A. Well, the laborer—I used him for—he tueled the tractor and in case it was that we had rain, he cleaned the tracks; and we used him on the toe of the berm. We had a condition down there down a good stretch of it that was covered with grass, I think they call it Bermuda grass, it was about waist high. And your ditches were eroded in that particular stretch right straight down, and it was fairly difficult to see.

And I had him spot those ditches along in front of the machine that was bringing the dirt up out of the bottom.

Q. Now when you say they were difficult to see, what visibility would there have been to the operator of a caterpillar, of an operator who was running the dozer if

1076 he were 25 to 30 feet from those ditches of erosion?

A. Well, some of them he could have seen, but some of them—that stuff was laid over where he would have missed it—and there are some conditions there where —well, just for instance, one time, why, the Government had a pressure relief well out in there on the slope of the levee, I would say they keep it mowed fairly well, and normally they keep the toe of this term mowed, but the erosion was so bad that they couldn't mow this particular stretch that we were in, and that stuff, we will say, sort of got out of hand as far as growth, and when you come down off the toe of the berm, you had horse weeds.

Well, they get quite high. As a matter of fact, I would say head high.

Q. Now you spoke about the laborer cleaning the tracks. Will you just describe that to the jury?

A. Well, when you work wet weather your tractor—your track carries your mud all around and it drops in on top of your roller frame. It muddies up your idlers, and it is a proper thing to keep them fairly clean, especially in the evening they clean them.

Q. Usually the work is done by laborers, by the laborers?

1077 A. Well, yes, usually.

Q. Mr. Sexauer, you were about to tell me something in regard to a well which you said the Government had there.

A. Well, one particular time down here in the horse weeds, why, well, I am just bring this up as an example of visibility, we had—I had an operator that run into one of the wells and bent it over to a small extent and straightened it back up with a cable; but how far you could see would vary upon conditions upon where you were.

Q. Now where did you obtain the laborer who was employed by you in connection with this work?

Mr. Stoddart: Object to the question as repetitious.

Mr. FitzGerald: I don't think I asked him where. Did I?

The Court: I thought he did, but he may answer. Go ahead. Let's get along.

Where did you obtain the laborer?

The Witness: Well, Longfellow had moved into the job a few days ahead of me, and I unloaded there in the afternoon and was to start work the next morning, and

1078 George had a laborer there, and I asked him if he was going to go by the hall that evening.

He said, "Sure!"

I said, "Well—"

Mr. Alexander: We object.

The Court: Objection sustained.

Where did your laborer come from?

The Witness: He come out of the local there.

The Court: All right.

The Witness: In other words, I sent—

The Court: That is right; go ahead.

The Witness: I sent my other man after him.

The Court: All right, what he wants to know is where he came from.

The Witness: O. K.

By Mr. FitzGerald: Q. Did anyone connected with that laborer make any demands of you that you have a laborer for each machine?

Mr. Alexander: To which we object as immaterial.

The Court: Objection overruled, he may answer.

The Witness: A. No. As a matter of fact, I never 1079 called—I never talked to any labor representative over there except before I did the job, I called Collinsville and asked if a laborer would be needed in that vicinity because I had understood there had been some labor trouble over there. What it was, I did not know definitely, but the best policy is if you bid on a job like that, to kind of have an idea of what is expected in the line of laborers or anything else.

By Mr. FitzGerald: Q. Now in addition to doing what you believe was diplomatic and the best policy, was the service of this laborer in your judgment essential to the operation of your contract business?

A. Well, there was days that I did not need a laborer, but most of the time I would say yes.

But you couldn't hire a man today and say, maybe, "Come back next week."

But normally, for the overall conditions, yes.

Q. You never knew just when the laborer's service would be demanded, did you?

A. No. I kept him fairly busy.

Mr. FitzGerald: You may ask, Mr. Alexander.

1080 *Cross Examination by Mr. Alexander.*

Q. You had two dozers?

A. Yes, sir.

Q. And this laborer took care of the dozers?

A. No. No, to this extent possibly to say, he fueled them, he cleaned them up, he kept water in them, and in case a cable broke or something, he would help, he would go out and get cable for him from the other truck, things like that.

Q. But you had other work you could assign him to?

A. Yes.

Q. You did assign him to other work?

A. That is right.

Q. Preparatory to this work you had heard there was some difficulty over there with respect to the employment of laborers on this levee?

A. That is right, it was in the papers, very well so.

Q. You saw it, and you thought it wise to take precautions so you could complete your contract without difficulty?

A. That is right, sir.

Also, I believe at the letting, the Engineers brought up that subject to a certain extent.

1081 Q. You were informed about it?

A. That is right, sir.

Q. And you gave consideration in that in figuring your bid?

A. That is right, sir.

Q. Now these deep ditches that you are telling about,

how much of the area under your contract included rather deep ditches?

A. Well, just what do you mean by that?

Q. Well, were there deep ditches all along the levee, or were they scattered? That is, eroded ditches.

A. Well, they was eroded on the lock end down there, I don't know whether you are acquainted with it or not, bad enough that before you could get a scraper through them in order to sort of dump in the ditch, you had to take a dozer and break the bank down.

Q. Now when you speak of from the lock down, what do you mean?

A. Well, I would say from the locks up.

Q. Are you familiar with—

A. I should have said "up."

Q. You mean up?

A. Yes, sir.

1082 Q. Well now, are you familiar with this, if this is the area, does this map mean anything to you?

A. Leave me have a look at it, possibly.

Q. This being south here (indicating).

A. That is north there apparently, the way it looks (indicating).

Q. Wait a minute. I guess we have it turned upside down. That would be a little better.

A. Yes, sir, it would be.

Q. Do I understand you worked from the locks down here in this vicinity (indicating)?

A. From the locks here, we worked this side of the canal up, and we worked from here, I would say, the mouth, or it might be maybe the beginning, whatever you want to call it, back to this overhead here (indicating).

Now this particular stretch through here was very much eroded.

Q. That is from the bridge south?

A. South.

Q. On what part of it was it heavily eroded?

A. On the river side.

Q. What part of the construction there, the berm or the levee proper?

1083 A. The berm.

Q. It was in the berm?

A. Yes, and the berm toe or slope, whatever you want to call it.

In other words, that slopes to the water.

Q. Well, just what do you mean by the berm toe? Is there a difference between the toe and the berm?

A. Yes. Your berm is the flat surface, and the toe is the slope that goes off of it.

Q. That slopes down to the water?

A. Yes.

Q. That is where this erosion was?

A. Yes.

Now you have a berm on the back side, and you have a toe on the back side of your levee also, in some places, and in some places it goes out flat, and we had quite a few large erosions north of the locks on the east side.

In other words, where your soil conditions were sandy and your grass had not taken a hold, that is where you had it.

Q. You went out on this site and examined it before you made your bid?

A. No, sir. It is hourly work, and if it had been
1084 yardage, you would have taken it into consideration.

Q. But you were being paid on an hourly basis?

A. Yes, sir.

Q. Now you say—you testified to Mr. FitzGerald, in answer to Mr. FitzGerald's question about cleaning up in the evening, that the laborer usually did that.

What did you mean by that? You sort of hesitated and said he usually did it.

A. Well, let's put it to you like this. We have had a fairly dry year and you don't have to do it every evening.

Q. And those soil conditions out there were not such as to cause much clogging up of the equipment, was it?

A. Well, some places it was sandy, some places we had gumbo, and I believe you are fairly well acquainted with gumbo soil. It is very sticky; but it don't have to be too wet for your tractor to carry it up.

Q. Well now, you were using dirt, or rather the scoops were bringing dirt from the fields on the land side of the levee?

A. That is right.

1085 Q. And dumping it, and you were working in that kind of dirt?

A. Not both of them, sir, one of them.

Q. One of them?

A. One of them, and one was working the back side of your levee berm.

Q. Just what do you mean by the back side?

A. Well, away from the water's edge.

Q. The land side?

A. The land side, yes.

Q. How much of the laborer's time was spent just attending to this equipment and rendering services in connection with the equipment?

A. Directly to the equipment?

Q. Yes.

A. I would say maybe a couple of hours a day. As well he went and got water, he went to Granite and got drinking water, got ice for the men, helped fuel.

Q. How many men did you have there altogether?

A. I had two, two besides the laborer and myself, there was four of us.

Q. Four of you altogether?

A. That is right.

Q. Where did you employ your operating engineer?

1086 A. Out of what local? 520.

Q. In East St. Louis?

A. Yes.

Q. You knew of no rule of that union requiring that a laborer attend each machine?

A. No, sir.

Q. Now you said there was some spotting work, you told this man to go and spot.

A. That is right.

Q. Was that a specific condition you found in one particular place?

A. Well, we found that pretty well all the way up from the land side of the berm toe.

Q. On the land side?

A. Yes. The erosion condition was, we will say, possibly a person wouldn't need the man there if they had not wanted to have saved the grass.

Now what work I had done before as an operator, we scoured the berm lengthwise. But they had a grass stand there that they did not want to get rid of, and of course by scouring it lengthwise, what you carry on the blade will normally fill it, fill in a ditch as you come to it, if it is not too much.

1087 If it is, why, I always went along and stripped ground out of the flat below the toe of the berm and brought it into the larger ditches to strip it lengthwise.

But here you couldn't do it. They had a Bermuda grass, and I believe they have had a pretty hard time getting a stand of it.

Q. How tall was it at that time in the summer?

A. Well, up where it was cut, it was, I would say, ankle high. Down there on that slope where it was not cut, it was waist high.

Q. Now was that true on the water side of the levee?

A. No, the water side of the levee was fairly well cut, except where erosion was bad.

Q. It was on the land side where you ran into those conditions?

A. Yes, that is right.

Q. And the weeds were over in the fields beyond the berm?

A. Well, the weeds was—it was part of the Chain. In other words, it was right at the top of the berm. In other words, the Government had, we will say, the Engineers had seeded the slope. They had not seeded out past the toe of the berm.

1088 Q. They only seeded out to the toe of the berm?

A. That is right.

Mr. Alexander: I think that is all.

Mr. FitzGerald: That is all.

The Court: We will take a recess at this time. Be back at two o'clock.

(And thereupon the jury retired from the court room.)

The Court: The court may recess until two o'clock.

(Whereupon a recess was taken until 2:00 o'clock p.m. of the same day, Wednesday, September 22, 1954.)

1089 Court reconvened in the above-entitled cause at the hour of 2:00 o'clock p. m., September 22, 1954, pursuant to recess.

Present:

Same as before, to-wit:

Mr. Alexander, Mr. Oxtoby, and Mr. Stoddart, appearing on behalf of the Government;

Mr. O'Neill and Mr. FitzGerald, appearing on behalf of the defendants.

1090 KENNETH E. WELLS, called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. O'Neill.

Q. What is your name, sir?
A. Kenneth E. Wells.
Q. Where do you live, Mr. Wells?
A. 1328 North Fourth Street.
Q. In what city?
A. Quincy, Illinois.
Q. What is your present occupation?
A. I am a civil engineer for the City of Quincy.
Q. Are you employed by the City of Quincy?
A. Yes.
Q. How long have you held that position?
A. Since the 8th of July, 1953.
Q. What is your age?
A. Beg your pardon?
Q. What is your age, about?
A. $4300 a year.
Q. I didn't say salary. How old are you?
1091 A. 53.

Q. How long have you lived in Quincy?

A. In Quincy, it has always been my home.

Q. Prior to the time that you became field engineer or engineer employed by the City of Quincy, what was your occupation?

A. I was foreman for dirt and paving contractors.

Q. Have you been during the last number of years employed in the construction industry?

A. Since February 8, 1923.

Q. In what capacity have you worked in the industry?

A. Both as civil engineer and as a foreman and superintendent on about every type of construction that there is.

Q. What are your duties as engineer for the City of Springfield—

Mr. FitzGerald: Quincy.

By Mr. O'Neill: I beg your pardon, I really do.

Q. What have been your duties as engineer for the City of Quincy?

A. I have charge of surveys and plans and construction for the City of Quincy.

Q. Since 1935 what specifically has been your occupation?

1092 A. I have been working for contractors.

Q. Have you employed in the operation of heavy equipment such as caterpillars, dozers, scoopers, and so forth?

A. Yes, sir.

Q. Were you within the last few years employed in any work on the Chain of Rocks canal levees down near Granite City, Chain of Rocks canal?

A. I worked during the construction season of 1951 and 1952 or parts of those seasons, those two different years.

Q. By whom were you employed?

A. W. G. Hollenbie Company.

Q. Was that a construction concern?

A. Yes, sir. That was covering the dam and the esplanade area with black dirt, that was a pump job or a sand job. It was necessary to cover that with black dirt preparatory to seeding it.

Q. And that was on the levee at the Chain of Rocks canal?

A. Yes, sir.

Q. Is the Hollenbie Company a Quincy concern?

A. Yes, sir.

Q. Is Mr. Hollenbie still alive?

1093 A. It was owned at that time by a father and two sons. The older son owned ⅔ of the company and the older son is now deceased.

Q. I see.

Now what specifically in connection with putting black dirt over the other dirt that comprised the levee, what sort of equipment would you—was used?

A. When I started, I used turnip pulls and dozers, and the second year I used scoops and dozers, caterpillars, they were scoops drawn by caterpillar tractors, and we pushed them—loaded them with dozers.

Q. Were you the superintendent for the Hollenbie Company on that project?

A. Yes, sir, that was my job.

Q. And in direct charge of the work that was done there?

A. Yes, sir.

Q. Do you know whether or not your company was under the general supervision of the Corps of Engineers?

A. Yes, sir, it was.

Q. In what year did you start operating this heavy equipment on the levees there?

1094 A. 1951.

Q. How many pieces of equipment did you start with?

A. Started with five.

Q. How many operators did you use on those five pieces of equipment?

A. Five operators, master mechanic and a greaser.

Q. During the course of that operation did you use any other employes?

A. Yes, sir, I used laborers.

Q. In connection with the operation of that equipment?

A. Yes, sir.

Q. Can you tell us how you came to use laborers on that?

Mr. Alexander: To which we object, if the Court please, as immaterial.

The Court: How he came to use them? I think the objection is good as to how he came to use them.

Mr. O'Neill: Well, all right, I will withdraw the question.

Q. You did use laborers in connection with the operation of that equipment?

A. We used two.

Q. Was the Hollenbie Company a direct con-
1095 tractor with the Government on work that you were doing?

A. No, sir.

Q. What were they?

A. We were a subcontractor of Rivers Construction Corporation, which was a multiple venture.

Q. I see.

Now in connection with the use of laborers on that equipment, I will ask you whether you had any conversation with the steward on the Rivers job, the labor steward.

A. I did.

Mr. Stoddart: Object to that. Go ahead and ask the question. I don't know who the steward is, I don't know what union he was connected with.

The Court: Well, we will try to find that out, if that is your objection.

By Mr. O'Neill: Q. The steward was connected with what labor union?

A. Granite City Local.

Q. Of what craft?

A. Common laborers.

Q. And he was employed by whom?

A. Rivers Construction Corporation.

1096 Q. On what project?

A. This land—dam and locks project at Granite City.

Q. Is that the dam and locks on the Chain of Rocks canal?

A. Yes, sir.

Q. Now did you have a conversation with him?

Mr. Stoddart: Objection. Fix the time and place.

By Mr. O'Neill: Q. Do you remember about when you had the conversation and where?

A. It was about the first of May when I went down there to look this job over for Mr. Hollenbie.

He was in charge of the common laborers on the locks and dam project at Granite City, the Chain of Rocks.

Q. In what year was that?

A. 1951.

Q. And the conversation was where, approximately?

A. I was asking him for information—

Mr. Alexander: No. He asked you where.

The Court: He said, "Where did it take place?"

The Witness: On this job at—

By Mr. O'Neill: Q. At the job site?

1097 A. At the job site, yes, sir.

Q. Now will you tell us when that conversation was?

Mr. Stoddart: I object. Who was present?

The Court: Tell who was present.

Mr. Oxtoby: Time and place and who was present, set it up.

By Mr. O'Neill: Now which one of you is objecting?

Mr. Stoddart: I made the objection.

Mr. Oxtoby: It doesn't make any difference. We are all representing the Government.

The Court: Now wait a minute, gentlemen. We are just killing time. It does make a difference which one of you gentlemen wants to object. I don't care who, but it is almost impossible for me to get your objections, and also for the reporter.

Now this gentleman has made the objection, the District Attorney.

Now what was your question? Did you put a question to him?

Mr. O'Neill: I asked him the time and the place, which he had identified, and I think my next question was, "What was the conversation?"

1098 The Court: All right. Now is there any objection to the conversation?

Mr. Oxtoby: We objected. He has not shown who was present.

Mr. Stoddart: Who was present at the time, the name of the steward. He has not laid a foundation for any conversation.

The Court: Tell him who was present. I think that was asked.

The Witness: The steward's name was Jimmie Parker.

By Mr. O'Neill: Q. Was he present then at the conversation?

A. He was.

Q. Who else was present, you?

A. Myself and the steward. I have forgotten his name, but he was steward of the operating engineers out of the East St. Louis local.

The Court: All right. Now is there any objection to the conversation?

Mr. Oxtoby: We objected.

Q. Now will you tell us what the conversation was?

A. I was asking for information as to working conditions in that local. I was trying to—

Q. What local?

1099 A. I was trying to familiarize myself with the policy of the union, both the common laborers local and the operators—operating engineers local; I don't know of any place where I could have gone where I could have gotten better information.

The Court: That is not the question. Now what was said? That is the question.

By Mr. O'Neill: Q. What was the conversation between you and the steward, Jimmie Parker, for the laborers union?

A. I asked him what the policy was in the number of laborers that I would be asked or required to use on that job—on my job.

Mr. Stoddart: Now may it please the Court, I object to the answer. I don't have any idea of what it is, of course, but I object on the grounds it is immaterial what the policy was in 1951, two years before this incident.

The Court: I agree with you. I cannot think it is material what their policy was. I don't think it makes any difference what their policy was at any time.

The whole question is whether or not in this par-
1100 ticular case that we are hearing about, what happened?

Now what policy they may have had two years before, or six months before, I cannot think is material to the issue in this case.

The objection will be sustained.

By Mr. O'Neill: Q. Well, in pursuance of that conver-

sation did you then have a conversation subsequently with Jack Green, the business agent?

A. The following day—

The Court: Answer his question, yes or no.

The Witness: Yes, sir.

By Mr. O'Neill: Q. When did you have that conversation?

A. The following day.

Q. Where did you have it? Where was the conversation at?

A. In Granite City, at Mr Green's residence.

Q. Well, let me ask the question:

Was it pursuant to this conversation with Jack Green that you employed—

Mr. Stoddart: I object.

Mr. O'Neill: Wait until I finish.

1101 Mr. Oxtoby: Object to the form of the question.

Mr. Stoddart: I object. Let me object. I object to the form of the question.

Mr. O'Neill: Wait until we ask the question.

Mr. Stoddart: Because it is going to go into something and get it in before the jury, what he did.

The Court: No, objection is overruled. Go ahead.

By Mr. O'Neill: Q. Was it pursuant to this conversation with Jack Green that you employed two laborers on five pieces of equipment?

Mr. Stoddart: Your Honor, now—

The Court: Wait a minute until he finishes the question.

By Mr. O'Neill: Q. (Continuing) —on the five pieces of equipment you used on that job?

Mr. Stoddart: May it please the Court, I would like to object. It is leading and suggestive, and secondly, it is immaterial. Thirdly, the jury has heard something

1102 that he has not testified to, by this counsel, and it is highly improper.

The Court: That isn't evidence, what the counsel's question is. The jury understands that.

Read the question, if you will, please.

(Question read.)

The Court: I think it is too remote. The objection will be sustained.

Mr. O'Neill: All right.

Q. Did the Hollembeck Construction Company complete its work on the levee there?

Mr. Stoddart: Object, it is immaterial.

The Court: Objection is overruled, he may answer.

The Witness: We did.

By Mr. O'Neill: Q. About what year did you complete it, Mr. Wells?

A. About October 1, 1952.

Q. And were you superintendent on the job for Hollembeck during that whole period of time?

A. Yes, sir.

Mr. O'Neill: You may cross-examine.

1103 Mr. Stoddart: Your Honor, I move to strike all of his testimony on the ground it is immaterial, incompetent, and irrelevant.

The Court: All of it?

Mr. Stoddart: All of it.

The Court: Motion will be overruled.

Mr. Stoddart: No cross-examination.

The Court: Call the next witness.

(Witness excused.)

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Supreme Court, U.S.
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In the

United States Court of Appeals

For the Seventh Circuit

Nos. 11887 - 11888

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* vs. JACK GREEN, *Defendant-Appellant.* (11887)	Appeals from the United States District Court for the Southern District of Illinois, Southern Division.
UNITED STATES OF AMERICA, *Plaintiff-Appellee,* vs. GENERAL LABORERS' LOCAL 397 OF GRANITE CITY, ILLINOIS, *Defendant-Appellant.* (11888)	Honorable J. Leroy Adair, Trial Judge.

APPENDIX TO APPELLANT'S BRIEF

U.S.C.A.-7
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1104 BRUCE WORTMAN, called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. O'Neill.

Q. Please state your full name, sir.

A. My full name is Bruce Wortman.

Q. Your name is Bruce Wortman?

A. That is right, sir.

Q. Are you the gentleman that has been referred to here as being called "Coondog" sometimes?

A. I am, sir.

Q. That is the nickname that the fellows give you out on the job sometimes?

A. Yes, sir.

Q. Where do you live, Bruce?

A. I live at 2821 Granite City, Illinois.

Q. Is that 2821 Marshall?

A. That is right, sir.

Q. Are you a member of Laborers Local 397?

A. I am, sir.

Q. How long have you been a member of Laborers Local No. 397?

1105 A. Seventeen years last June, sir.

Q. Were you a member last April 13th?

A. Yes, sir.

Q. Where were you working on or about the 13th of April, 1953?

A. Granite City Steel, sir.

Q. Were you working for Granite City Steel?

A. I was working for the Rust Construction Company at Granite City Steel.

Q. How long had you been working for the Rust Construction Company at Granite City Steel?

A. Two years, or a little better, sir.

Q. In what capacity were you employed there?

A. I was a laborer, sir.

Q. Well, did you have any official position with reference to the union?

A. Yes, sir, I was their shop steward.

Q. And as shop steward generally, Bruce, very shortly, what were your duties?

A. Well, my duties as a shop steward is to keep good will among the men and see that everything goes off good and to keep down all of the trouble you can, and if one of our men is—should happen to be injured, it is to see that he is taken to the doctor or the hospital at once, 1106 notify his family, and if there is—should any difficulty arise or disputes, see if you ca nsettle them in a mannerly way.

Q. Well, on a construction job like that, is it customary and in accordance with the rules of the union that you have one shop steward on the job?

A. Yes, sir.

Q. Or do you have more than one?

A. Yes, sir, for the laborers, one.

Q. One?

A. Yes, sir.

Q. Do you know approximately how many laborers were working on the job for the Rust Company at Granite City Steel that day?

A. I would say, sir, 350.

Q. Did they work more than one shift?

A. Yes, sir, they worked that, yes, sir.

Q. How many shifts did they work?

A. At that time, if my memory serves me right, we were working three.

Q. Around the clock?

A. Yes, sir.

Q. Well, were the 350 split up on the three shifts?

1107 A. Yes, sir.

Q. Approximately how many were working on your shift, just a guess?

A. Oh, I would say 135—now that is just a guess.

Q. All right. You were on what shift?

A. I was on the 8:00 in the morning until 4.30 in the evening, sir.

Q. Did each shift have its own steward?

A. Yes, sir.

Q. Now on the morning of April 13th, what time did you report to work?

A. Oh, I would say probably 7:30, quarter to eight, sir.

Q. Had you stopped at the union hall on your way to work?

A. I don't remember whether I did that morning or not, sir.

Q. After you got to work, what did you do?

A. Well, I went to work on my job, the job that the foreman had.

Q. Sir?

A. I say, I went to work at the job the foreman had given me, which was taking care of the lights that we had to put around the holes, fill in all the smudge

1108 pots so that there wouldn't be anyone who would get into them at night.

Q. In other words, your steward's job was just a job in connection with the relationship between the fellows in the union and the company, your work besides that?

A. Sure; yes, sir, that is right.

Q. Just the same as any other laborer out there?

A. Yes, sir, that is right.

Q. Well, during the course of the morning in going about your job, did anything unusual occur?

A. Yes, sir.

Q. About what time and what was it?

A. Well, I would say between nine-thirty and ten, if my memory serves me right, around ten o'clock.

Q. What happened?

A. Well, we got word that there was some unfair labor practice going on out at the levee.

Q. Do you remember who told you that?

A. No, sir, I sure don't.

Q. As a member of 397, do you usually attend the meetings?

A. I do, sir.

Q. Do you recall a meeting on April 9th when the 1109 business agent reported various affairs of interest to the union, or were you at that meeting, if you recall?

A. I don't recall, sir.

Q. Do you recall ever the business agent Jack Green reporting unfair contractors out on the canal levee job?

A. Not until that day.

Q. Not until the day of this incident, had you heard any discussion of it before that time?

A. Not before, no.

Q. All right. What did you hear on that morning, to the best of your recollection?

A. Well, to the best of my knowledge I heard that they, just like I repeated, that there was some unfair labor movement out there, that a company moved in from across the river, that they did not intend to give us our work like the other contractors had in the past.

Q. Well, what did you do personally?

A. Personally, I went along with the crowd that went out there.

Q. So far as the employment—I mean the men work-

ing on the job for the Rust Company there—did you
1110 have any supervision or control over them from a working standpoint?

A. You mean as a foreman?

Q. Yes.

A. No, sir.

Q. So that you could not tell a fellow what to do or to keep on the job or see that he did, and so forth?

A. No, sir; no, sir. No foreman can.

Q. All right. When you heard there was some trouble up on the levee, what did you do?

A. Well, I went along when they started leaving, I went along.

Q. Did you go first, or what?

A. Well, no, I wasn't first: I went with the bunch—with the men I went with.

Q. By the "bunch," do you mean the laborers working on that shift for the Rust Company at that time?

A. Yes, sir.

Q. You have estimated that there were approximately 135 men working at that time. Do you know whether all of them went along?

A. I couldn't swear that they all went, no, sir.

Q. Have you any idea of how many went?

1111 A. Well, I would say the majority of them went, yes, sir.

Q. Did you all go at once, or was it a kind of a procession?

A. No, they all got ready and went, they just went as they heard it.

Q. How did you check in and out of your work?

A. We went by the—we picked up a brass.

Q. You picked up a brass when you come to work?

A. Yes, sir.

Q. And turn it in when you leave?

A. Yes, sir.

Q. When you left, did you turn in your piece of brass?

A. I turned in my piece of brass, yes, sir.

Q. Where did you go?

A. I went past our hall.

Q. In whose car?

A. In my own.

Q. Did anybody go with you in your car?

A. Yes, sir.

Q. How many?

A. One.

Q. Sir?

A. One.

1112 Q. Do you know who that was?

A. Yes, sir.

Q. Who was it?

A. It was a boy by the name of Bill Simmons.

Q. All right. Where did you and Bill go when you left the Rust Company?

A. I left the Rust Company, I picked Bill up; as I started by the hall, he waved. He said, "I want to go along." I said, "You had better go in."

Q. You went from the Rust Company to the hall by yourself?

A. Yes, sir.

Q. Where is the Granite City Steel with reference to the hall, how many blocks away would you say?

A. Oh, I would say probably eight.

Q. Now when you got to the hall, what did you find up there, Bruce?

A. They were practically all gone, all but Mr. Green was there when I went by.

Q. Did you stop?

A. I stopped the car, but I never got out.

Q. Did you talk to Jack Green?

A. He said, "If we are going out there" he said,
1113 "you fellows don't cause any trouble out there."
That is the words the man used.

Q. Had you said anything to him about where they were going or anything?

A. I already knew where I was going.

Q. I see. Is that all that was said between you and him?

A. That was all that was said between Mr. Green and I.

Q. Then you saw Mr. Simmons?

A. Mr. Simmons was already on the walk there. We were getting ready to go when he made that remark.

Q. He got in the car with you?

A. Mr. Simmons did?

Q. Yes. Now, were there many men around the hall there in cars?

A. Not many, no, sir.

Q. They had taken off already?

A. I suppose so, yes, sir.

Q. All right. Where did you go?

A. I went out there to the levee by the Chain of Rocks bridge.

Q. How did you go, up 67 and down 66?

A. That is the way we did, yes, sir.

Q. When you got down to where the Chain of
1114 Rocks canal is, where did you go then?

A. We went up on the levee where the rest of the men were, where the men were going, yes, sir.

Q. All right. Did you observe any cars out there?

A. There were some, yes, sir.

Q. I mean that the men had come out in?

A. Yes, sir.

Q. Where were the cars that you saw out there parked, Bruce?

A. They were along the road, the road that is at the foot of the levee, sir.

Q. Showing you a picture identified as Government's Exhibit 13-D, which is a picture taken from the bridge and looking south, I will ask you to tell the jury whether that resembles in any way the scene that you saw when you got out there.

A. It sure does; it sure does.

Q. Here is a picture identified as Government's Exhibit 13-A, which was a picture taken from the bridge looking north on the other end of the bridge, on the other side of the bridge, and I ask you if you saw anything resembling that there?

A. That is a picture I recognize.

Q. You are referring to 13-D?

1115 A. Yes, sir.

Q. Did you park south of the bridge along where those cars are parked, if you recall?

A. Yes, sir. I headed down the river, that is south on the Illinois side.

Q. What did you do when you stopped?

A. Bill and I got out of the car. We went down and went up on the levee where the gathering was.

Q. At the time you got there, did you see Jack Green—

Mr. Alexander: We object to the leading nature of the question at this point.

The Court: Leading, that he saw Jack Green?

Mr. Stoddart: At the time he got there.

The Court: He may answer that.

The Witness: A. Yes, sir, I saw Jack, not probably right as I got there, but as we were there a few minutes, I saw Mr. Green there, yes, sir.

Q. Where was he when you first saw him?

A. He was up on the levee there with his men.

Q. Were you up there too?

A. Yes, sir.

Q. Did you see any cars up on the levee?

A. Yes, sir.

Q. Do you recall approximately how many you saw?

1116 A. One in particular.

Q. What was that one?

A. That was a car that Mr. Terry and his folks left the levee in.

Q. Did you know Mr. Terry?

A. Not until that day, sir.

Q. Did you meet him that day, or did somebody just point him out to you?

A. Well, I just met the gentleman that day. Nobody introduced me to him or pointed him out. I just picked him out.

Q. When you came up on the levee, where did you come up with reference to where Terry's car was standing?

A. I come up probably down the river a block from the first.

Q. That would be south of where Terry's car was standing?

A. That is right; yes, sir.

Q. Did you see anybody you knew out there?

A. Well, yes, sir.

Q. You saw fellows from the union, did you not?

A. Sure. That is right.

Q. Did you see anyone else that you knew?

1117 A. Oh, just some, yes, sir.

Q. Do you know the sheriff of Madison County, Jimmie Callahan?

A. I know the gentleman when I see him, yes, sir.

Q. Do you know George Musso, his deputy?

A. When I see him, yes, sir.

Q. Do you know Jack Fricker, the deputy from Granite City?

A. I wouldn't know the gentleman unless he was introduced to me, sir.

Q. Did you see Musso and Callahan there?

A. Yes, sir.

Q. Where were they when you came up on the levee?

A. They were among the crowd when I first noticed it.

Q. All right. Where did you go when you came up on the levee?

A. I just went up on the levee, sir.

Q. Did you go down to where the Terry car was, or where the group was?

A. Yes, sir, I walked down to where the Terry car was.

Q. Did you see a piece of equipment down on the berm toward the canal?

A. Yes, sir.

1118 Q. Was it operating when you got there?

A. No, sir.

Q. Did you see the operator of that equipment?

A. Not to my knowledge.

Q. There wasn't anybody on it when you saw it?

A. No, sir.

Q. Did you observe any other cars near the Terry car?

A. Not to my knowledge, sir.

Q. How close would you say you came to where the Terry car was located?

A. I was right at the Terry car.

Q. Was there a group around it?

A. Yes, sir.

Q. Well now, you identified Mr. Terry as the man that got in the car and left?

A. Sir, I did not.

Q. I say, you identified Mr. Terry as the man who got into that car and left subsequently?

A. I knew he was one of the men who got in the car and left, yes, sir.

Q. Did you see him before he got into the car and left?

A. Yes, sir.

Q. Where was he then?

1119 A. He was standing, oh, six, eight, ten feet from his automobile—from the automobile.

Q. Did you see whom he was talking to, or whom he did talk to?

A. Yes, sir.

Q. Whom did he talk to?

A. He was talking to the two gentlemen that I presume that was with him, they left with him.

Q. Did you see him have a conversation with the sheriff and his deputies?

A. No, sir.

Q. Did you see him have a conversation with Jack Green?

A. You mean as man to man?

Q. Terry.

A. Sir?

Q. Terry.

A. No, sir, I did not see Jack Green personally talk to Mr. Terry.

Q. Were there a good many men around the car then?

A. Yes, sir.

Q. Did you see anybody take a swing at Mr. Terry?

A. No, sir; no, sir.

Q. Were you able to observe from where you were

1120 standing the crowd, and how it was dispersed around the levee?

A. What do you mean, "dispersed," sir?

Q. Spread out. I mean how they were gathered.

A. Oh, they were all over the levee in that particular section, yes, sir.

Q. Would you make an estimate for the jury as to how many men you thought were around there altogether?

A. I would say 300.

I am just guessing at that.

Q. Did you see Mr. Terry—I don't know whether I asked you this or not, and if I did I am sorry—did you see Mr. Terry have any conversation with Jimmie Callahan or with George Musso while you were there?

A. No, sir.

Q. How long do you think you were there before Terry got there?

A. I wasn't there over twenty-five minutes.

Q. Were you there for the whole twenty-five minutes while Terry was standing outside of his car and before he got into the car and left?

A. You mean was I at the car the whole twenty-five minutes?

1121 Q. Yes.

A. No, sir, I was down the levee a ways.

Q. About how long would you say you were up around the car?

A. Maybe ten minutes.

Q. Did you hear during the time that you were there, did you hear Jack Green say anything to Mr. Terry, or to the sheriff, or to the men there?

Mr. Alexander: To which we object as repetitious. He has already asked it and it has been answered.

Mr. O'Neill: I don't think so.

The Court: I think he answered that. If he heard him say anything to those men, he may answer.

The Witness: A. I heard Jack Green having a conversation.

By Mr. O'Neill: Q. Did you hear the conversation yourself to know what they were saying?

A. Yes, sir, with the sheriff.

Mr. Alexander: This is with the sheriff.

Mr. O'Neill: I meant with anybody.

Mr. Alexander: If it is understood it is with the sheriff —I didn't know, I mean—

1122 By Mr. O'Neill: Q. What did you hear Jack Green and what did you hear the sheriff say?

A. I heard the sheriff say, "Jack, do you suppose they are going to behave?"

And Jack Green said, "I think so. They told me they would, and I think they know enough to behave."

And that is what I heard Jack tell the sheriff.

Q. Did you hear anything else that you recall?

A. Yes, sir.

Q. All right, who said it?

A. Jack Green.

Q. What did he say then?

A. He said, "I will have them off of here and put them back to their jobs in just a few minutes, I think."

That is the words he said.

Q. All right. Did you hear anything else that you recall?

A. Yes, sir. He told us to go on back to work.

Q. Now was that before or after Mr. Terry had left?

A. That was before Mr. Terry had left.

Q. That he told you to go on back to work?

A. Yes, sir.

1123 Q. That is your best recollection about it?

A. Yes, that is my recollection.

Q. What did you do then?

A. I got ready to go back to work, sir.

Q. Did Bill go back with you, Bill Simmons?

A. He went back as far as the hall, if my memory serves me right. I wouldn't swear to that, but I am pretty sure that Bill went back as far as the hall because Bill and I was working on two different jobs, if I recollect right.

Cross-Examination by Mr. Alexander.

Q. Did you see Mr. Terry leave?

A. Yes, sir.

Q. Then you left?

A. Yes, sir.

Q. And you had accomplished your purpose when he left, hadn't you?

A. Just what do you mean by that, sir?

Q. That was—

A. I didn't have any specific purpose in mind when I went out there.

Q. None at all?

1124 A. No, sir.

Q. What did you go out there for?

A. I went out there to see what the reason was why the men should be out there.

Q. Did you find out?

A. Yes, sir.

Q. Who told you?

A. Why, I didn't—nobody needed to tell me.

Q. Well, you didn't know before, did you?

A. Sir?

Q. You didn't know before you went out there?

A. No, sir.

Q. All right. Now, who told you when you got out there?

A. They didn't nobody have to tell me, I could see.

Q. What did you see?

A. I saw that the gentleman they said was Mr. Terry was out there with his dirt equipment and was working on the levee.

Q. As I understood it, the equipment wasn't working when you got out there.

A. Mister, it had been working before I got there.

Q. You didn't see it working, though?

A. No, sir. I didn't see it working.

1125 Q. How did you know what this was all about then?

A. Well, I am an average—I suppose an average laborer.

Q. Well—

Mr. O'Neill: Let him finish his answer.

The Witness: I suppose I am an average man. I could tell the equipment had been working like I had heard.

By Mr. Alexander: Q. Well, what had you heard?

A. I heard that Mr.—I heard there was a gentleman out there with dirt equipment that was doing work on the levee, and that they didn't intend to let us have our work that was practiced by the other contractors that had always done business with us in that locality.

Q. Well now, where had you heard that?

A. Sir?

Q. Who told you that?

A. Well, it was common knowledge on the job, the job I left.

Q. Do you remember who told you on the job you left?

A. No, sir.

Q. Had you ever talked with Jack Green about it?

A. No, sir, not that morning, sir.

1126 Q. Well, any time?

A. No, sir.

Q. Now the only thing you saw when you got out there was a piece of idle equipment and a crowd of men around a car, isn't that it?

A. And men on the levee, yes, sir.

Q. And men on the levee. Well, that was closer to the car, wasn't it?

A. I would say within a couple of blocks, some of them, yes, sir.

Q. Now you are an appointee of Mr. Green as a shop steward, aren't you?

A. I don't quite understand, sir.

Q. Mr. Green appointed the shop stewards?

A. That is right, sir.

Q. And he appointed you?

A. Yes, sir.

Q. When did he first appoint you?

A. On that particular job it was two years before because I had been there over two years on that job.

Q. And you had been a shop steward any place else, had you?

A. Yes, sir.

Q. How long altogether had you been a shop steward?

1127. A. Well, I have been in the local around seventeen years, like I said, and I will say fourteen of it I have been shop steward.

Now that is just a guess, but that is a good one.

Q. During all of that time you had been associated with Mr. Green?

A. In a business way, yes, sir.

Q. You have been a regular attendant at the meetings?

A. Yes, sir, very few I miss.

Q. And you take an active part in the affairs of the union?

A. Yes, sir.

Q. Now you say you saw other members of the union around there, whom did you see?

A. I saw Mr. Simmons.

I saw Mr. Green.

Q. Any others?

A. Yes, sir. I saw Mr. Wally Simpson.

Q. Did Mr. Simmons stay with you while you were up there?

A. Not in particular, he was there with the crowd.

Q. Whom else did you see that belonged to the union, I didn't get that third name you gave.

1128 Mr. O'Neill: Wally Simpson.

The Witness: Mr. Wally Simpson, sir.

By Mr. Alexander: Q. Simpson?

A. Yes, sir.

Gee, a year ago is kind of hard to remember.

Q. Well, if you remember any others.

A. I don't believe I do, sir, that I can recall the names and swear to it.

Q. On your shift of approximately 135 men, how many of them were members of the local?

A. I wouldn't know, sir.

You mean of 1937?

Q. Yes, 397.

A. I wouldn't know, sir.

Q. Well, can you name some of them who were members of the local?

A. That was on our shift?

Q. That was on your shift, yes.

A. Yes, sir, I can name a foreman, Mr. Woodsworth.

Q. Now did Mr. Woodsworth go down with the crowd?

A. Not that I recall, no, sir, I didn't see Mr. Woodsworth.

Q. All right. Who else do you know?

1129 A. Mr. Jesse—oh, Jesse Hildredge.

Q. Do you know whether he went down?

A. No, sir, I couldn't recall.

Q. You don't know the members of the union on your shift who went down, aside from Mr. Simpson, you don't recall them, do you?

A. No, sir, I don't, sir.

Q. Now there were other stewards at that same plant, were there not?

A. You mean on my shift?

Q. Not on your shift, on the other shifts.

A. Yes, sir.

Q. Who were the other stewards out there?

A. Well, one of them was Mr. Diggert.

Q. How is that?

A. Diggert.

Q. Who was the third steward? If you don't remember—

A. I don't remember our third.

Q. Did you see any other car of any kind in the vicinity of Mr. Terry's car?

A. You mean up on the levee, sir?

Q. Well, where Terry was, in the immediate vicinity of where Mr. Terry's car was parked.

A. No, sir, I didn't.

1130 Q. Did you see a pick-up truck there?

A. Not that I recall; no, sir.

If I did, I didn't pay any attention to it.

Q. Now you say, where was Mr. Musso when you were standing close to Terry's car?

A. He was right—he was there among us.

Q. Right in the crowd?

A. No. No, not right in the crowd, but I would say as far as near to you gentlemen when I noticed him.

Q. You knew Mr. Musso?

A. Yes, sir.

Q. This man, did I understand you to say you saw one of the men who accompanied or went away with Mr. Terry?

A. Yes, sir. I saw him with Mr. Terry. I noticed him in particular.

Q. Where was he?

A. He was standing there reasonably close to Mr. Terry.

Q. Do you know who he was?

A. No, sir.

Q. Did you see another man that was there?

A. Yes, sir.

1131 Q. Where was he?

A. He was reasonably close to Mr. Terry.

Q. Both of those two guards were right close to Mr. Terry?

A. Both of those two gentlemen. I didn't know they were guards.

Q. Weren't you told, among other things, that he was out there with guards?

A. Yes, sir, I was, sir.

Q. Using that same reasoning that you used before, you felt pretty sure they were his bodyguards, didn't you, at that time?

A. From the looks of them, I thought they would make good ones.

Q. They were both standing right there?

A. Not right against Mr. Terry, no, but in the vicinity of him, yes.

Q. In the vicinity of Mr. Terry?

A. That is right, sir.

Q. When you left the plant, did you know where you were going?

A. I sure did.

Q. How did you know that?

A. Because I know where the Chain of Rocks bridge is.

1132 Q. Who told you anything about the Chain of Rocks?

A. You mean the Chain of Rocks bridge?

Q. Yes, that is where you were to go.

A. It was told on the job that this here doings was out on the levee by the Chain of Rocks bridge.

Q. When was it told to you?

A. That morning, I will say between nine and ten o'clock.

Q. Who told you?

A. I could not recall, sir. It was just common knowledge on the job and we all knew it in just a few minutes.

Q. They all knew that they were going out to the Chain of Rocks?

A. They sure must have, we were there.

Q. Why did you go to the meeting hall?

A. That is the road by there.

Q. I see, you just drove by there, you hadn't any intention of stopping at the hall until you got there?

A. None in particular, no, sir, that is correct.

Mr. Alexander: I think that is all.

Mr. O'Neill: That is all.

The Court: Call the next.

(Witness excused.)

1133 JOHN EMIL FALK, called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. O'Neill.

Q. State your full name, please.

A. John Emil Falk.

Q. Where do you live, John?

A. 4101 Rode Avenue.

Q. That is spelled R-o-d-e?

A. Yes, sir.

Q. Is that in Granite City?

A. Granite City, Illinois.

Q. Are you employed down there?

A. Yes, sir.

Q. Where?

A. I am working for Bud Sieboldt at the present time.

Q. How long have you been a member of Local 397, or are you not a member?

A. I am not a member of 397.

Q. What local are you a member of?

A. St. Jacobs Local 674.

1134 Q. How long have you been a member of St. Jacobs Local 674?

A. For about a year.

Q. That is a laborers' union?

A. Yes, sir.

Q. Were you associated with the laborers' union before you joined St. Jacobs?

A. I have been before, yes, sir.

I belonged to Local No. 100 at one time.

Q. In East St. Louis?

A. East St. Louis, yes, sir.

Q. Then from that you transferred to St. Jacobs?

A. No, sir. I went into the Service and lost my card, and then when I worked on a permit for a while, then I joined St. Jacobs local.

Q. Were you a member of St. Jacobs on or about the 13th of April, 1953?

A. Yes, sir.

Q. That was at the time that this event happened out on the levee?

A. Yes, sir.

Q. Where had you been working, or where were you working at that time?

A. Granite City Steel.

1135 Q. Now, were you working for the Rust Construction Company later?

A. Yes, sir.

Q. How long had you been working for the Rust people at the Granite City Steel?

A. Oh, about two months.

Q. What were you doing there?

A. I was burning.

Q. By burning, do you mean you were using an acetylene torch?

A. Acetylene torch, yes, sir.

Q. You didn't hold any official position in the union or on the job, did you?

A. No, sir.

Q. You weren't a foreman or a steward?

A. Not at that time, no, sir.

Q. Just a working man?

A. Yes, sir.

Q. On the particular morning in question, what time did you report to work, if you recall?

A. About ten minutes after—oh, about seven-thirty, about seven-thirty.

Q. I see. Did you start working there that morning?

A. Yes, sir.

1136 Q. Burning?

A. Yes, sir.

Q. Did anything unusual happen?

A. Oh, some time after we had been working for a while, I noticed several men going by and asked them where they was going?

And they just said, "Come on!"

Q. Did they tell you at the time where they were going?

A. No, not at that time.

Q. Do you have any idea of how many men were working out there with the laborers at that time?

A. At the mill?

Q. Yes.

A. No, I haven't, no.

Q. How many men would you say went by that you asked them where they were going and they said, "Come on!"?

A. There was about eight or ten of them.

Q. Enough to make a crowd?

A. That is right.

Q. What did you do?

A. I just went with them.

Q. Did you put your equipment up before you left?

1137 A. I just hung it up and left.

Q. Where were you working at the time?

A. On the soaking pits.

Q. Soaking pits?

A. Yes, sir.

Q. All right. You joined eight or ten fellows that were leaving?

A. That is right.

Q. What did you do, did you check out?

A. Yes, sir.

Q. And you checked out with a piece of brass?

A. That is right, yes, sir.

Q. Do you know, after you left the mill, whether you left in your car or somebody else's?

A. I left in my car by myself.

Q. Did anybody go with you?

A. No, sir.

Q. Where did you go after you left the mill?

A. I went up 20th Street and I stopped by the labor hall in the parking lot.

Q. Did you get into the parking lot there?

A. I walked in.

Q. I see. Was there anybody at the labor hall when you got there?

1138 A. Yes, sir.

Q. How many people would you say was there?

A. Oh, I imagine there was about fifty.

Q. A number of cars also?

A. Oh, a number of cars; I don't know how many cars were there.

Q. Did you see the defendant Jack Green there?

A. Yes, sir.

Q. Did you see anybody else there that you knew?

A. Oh, there were several fellows I knew.

Q. Well, could you tell us a few names?

A. I saw Pete Paradidi, and Chuck Modine, I saw so many of them I can't remember them all.

Q. Were all of the people that you saw there members of Local 397?

A. No, sir.

Q. Some of them were members of other locals like you yourself?

A. Yes, sir.

Q. Did you say your did see Jack Green there?

A. Yes, sir.

Q. Did you have any conversation with him?

A. No, sir.

Q. Did you hear him say anything?

1139 A. No, sir.

Q. Well, did you hear any conversation there?

A. Oh, some of the boys just said that there was an unfair job on the levee.

And I asked them whereabouts it was.

And they said, "Up on the other side of the bridge!"

And I just said, "Well, I am going up."

And I got in my car and left.

Q. Did you go by yourself?

A. Yes, sir.

Q. Were there other cars that left too?

A. Yes, sir, there were other cars.

Q. Before you?

A. Yes, sir.

Q. Would you have any idea of how many had gone ahead of you?

A. No, not in cars.

Q. Well, how did you go, up 67 and then 66 and over to the bridge?

A. Yes, sir.

Q. When you got over to the bridge, what did you do?

A. Parked the car and walked up on the levee.

Q. Where did you park?

1140 A. Along the road down there.

Q. Was it under the bridge that you parked, if you recall?

A. It was pretty close to the bridge, I just don't recall where it was.

Q. You don't know on which side, the north or south side?

A. No, I don't.

Q. All right. When you parked your car and walked down the levee, did you park up on the levee or down on the road running along besides it?

A. Down on the road running along besides it.

Q. When you got out of your car, did you walk down that road or go up on the levee?

A. No, I just walked right on the levee.

Q. Were there other people ahead of you there?

A. Yes, sir.

Q. Can you give us any idea of how many men were there before you got there?

A. There must have been around a hundred before I got there.

Q. And a number of other cars there?

A. Yes, sir.

Q. Did you see Jack Green?

1141 A. Not when I got there. He came later.

Q. About how much longer after you got there was it before Jack came?

A. Oh, approximately five minutes, I imagine.

Q. All right. As you walked down the levee from the bridge—I will show you a picture marked for identification Defendants' Exhibit 1 and Government's Exhibit 4—and ask you if you recognize that road.

A. Yes, sir.

Q. Is that the road that leads south from the bridge?

A. Yes, sir.

Q. I mean comes down under the bridge and along the top of the levee?

A. Yes, sir.

Q. Is that the road you mean that you walked down?

A. That is the road.

Q. As you came down that road, John, did you see any cars on the levee?

A. No, I don't recall any cars, no, sir.

Q. On this road?

A. Yes, sir.

Q. Well, how far down the road did you come?

A. Oh, I don't know how far we did go, up to 1142 where they were working up there.

Q. Did you see a piece of equipment working there?

A. There was a piece there, yes, sir.

Q. Was it working at the time you saw it?

A. It was moving back down towards on the levee, it probably was working. It might have been going to get another load or something, I don't know what it was doing, but it was running.

Q. Will you show the jury where it was running around, where?

A. Down along on the side down below here (indicating).

Q. Pointing down below where the water is shown?

A. Yes, sir, on that side of the levee (indicating).

Q. There was an operator on the equipment, on the piece of equipment?

A. Yes, sir.

Q. Well, tell the jury what you saw that equipment do and the operator do, if you saw it.

A. Well, that "cat"—whatever it was—when it moved down there a little ways, why, he parked, and a couple of men walked down by him, he got off the "cat", and asked what was the trouble.

1143 They said they didn't know yet, they just heard it was an unfair job, and asked him if he would park his "cat" for a while.

He said, "Why, sure!" and walked up on the levee with the men, and then I did not see him any more after that.

Q. Well, then you, or one of the men walked down to where the equipment was moving?

A. No, sir.

Mr. Alexander: We object to leading this witness and suggesting.

The Court: He has answered it, if he did lead him. He said he wasn't.

By Mr. O'Neill: I was only trying to speed the thing up.

Mr. Alexander: I know; when you get down to this point, you had better let the witness testify.

Mr. O'Neill: All right, we will just follow your suggestions right along now.

Q. Well, did you go down to where the equipment was?

A. No, sir.

Q. Well, did you hear the conversation that took place down there, that you have just related here?

A. No, sir. One of the fellows said that is what he

1144 asked.

Q. Oh, it wasn't conversation that you heard at all, then?

A. No, sir; no, sir, I didn't hear it personally.

Q. I see. Did you ever go down off the top of the levee, John?

A. No, sir.

Q. Could you give us an estimate as to how far down the levee you came?

A. No, I can't, sir.

I don't know about how far it was.

Q. You don't recall seeing any cars up on the top of the levee?

A. Not on top of the levee, I didn't see any where I walked.

Q. Sir?

A. Not the part of the levee that I walked on.

Q. Well, did you see any cars ahead of you further down the levee?

A. Yes, sir, I think there was a car or two parked down there. I don't recall what they were.

Q. Did you get as far down as those cars?

A. No, sir.

Q. Now were there other men on the levee between 1145 you and where those cars were?

A. Yes, sir.

Q. You saw the defendant, you say, Jack Green, come up on the levee?

A. Yes, sir.

Q. Did he come from the other direction?

A. No.

Q. From where you came from?

A. No, sir. He came from the same direction I came from.

Q. Behind you?

A. Yes, sir.

Q. That is your best recollection?

A. Yes, sir.

Q. All right. Did you see where Jack went then?

A. He walked up towards those other cars that was parked up there.

Q. Did you follow him up there?

A. No, sir.

Q. Did you observe what happened up there?

A. Well, he went up and talked to some men that were dressed up. I didn't know who they were.

Q. Did you see what the men who were dressed up did after he talked to them?

1146 A. No. They were just in a huddle talking, I couldn't hear them, what it was about.

Q. By that time there were a good many men on the levee?

A. Yes, sir.

Q. Well, did you hear anybody say anything while you were out there on the levee? I mean that you specifically remember. Did you hear Jack Green say anything?

A. The only thing I heard him say is—he turned around and said, "O. K., men!"

He says, "Let these fellows go" and "We don't want no violence or no trouble."

He says, "Go on back to your jobs!"

Mr. O'Neill: You can cross-examine.

Cross-Examination by Mr. Alexander.

Q. Are you a member now of the Granite City local?

A. No, sir.

Q. You are still a member of St. Jacobs local?

A. Yes, sir.

Q. Are you what is called a permit worker in that jurisdiction?

1147 A. Yes, sir.

Q. Now when you came to g[illegible]ployment at the Rust Company, that means you had to go to get the per-

mit of the union to be employed on that particular job, that is correct, is it not, to work in their jurisdiction?

A. Yes, sir.

Q. And with whom did you deal, Mr. Green?

A. Charlie Parker.

Q. He is the financial secretary?

A. Yes, sir.

Q. You have been connected with union affairs and with the common laborers union for a considerable number of years?

A. Yes, sir.

Q. You know generally their rules and regulations?

A. Most of them.

Q. Now it is one of the rules that a permit worker is bound to observe and cooperate in the policies of the local where he is working, that is true, isn't it?

A. Yes, sir.

Q. And the local business representative represents the permit workers as well as the members of his 1148 union, that is true, isn't it?

A. Yes, sir.

Q. And the steward, having charge of laborers, he represents both the permit workers and the local members in their relationship with the employer?

A. Yes, sir.

Q. You, as a permit worker, did not attend meetings of this local, I take it?

A. No, sir.

Q. And had not voted in their meetings?

A. No, sir.

Q. You worked at the Granite City Steel Company. Who was your steward there?

A. Bruce Wortman.

Q. Now what was the first you heard about this day, what was the first thing you heard about this incident that day?

A. When I seen those fellows going by, I just asked them where they was going.

They just told me to come on.

I didn't hear anything at the time, at the present time then on the job.

Q. You knew then when you left—you didn't know what it was all about?

1149 A. No, sir.

Q. You went out and got your car?

A. Yes, sir.

Q. Did you see these other men leaving?

A. Yes, sir.

Q. Other men in their cars?

A. Yes, sir.

Q. Did you see your steward leave?

A. No, sir.

Q. How many cars preceded you?

A. Well, there is two or three.

Q. What did you do, just follow them?

A. Yes, sir.

Q. Did they go to the hall?

A. Some of them stopped, and some of them did not.

Q. Now, you stopped?

A. Yes, sir.

Q. In the parking lot?

A. Yes, sir.

Q. Then where did you go?

A. I went in the parking lot.

Q. How close was that to the hall?

A. It is right next to the hall.

Q. Where is it with respect to the entrance to

1150 the hall?

A. It is on one side of the entrance of the hall.

Q. Did you see any men entering or leaving the hall?

A. No, sir.

Q. How many men would you say was there?
A. Oh, about fifty or sixty.
Q. Was there any talk there?
A. Yes.
Q. Where was Green when you saw him there?
A. He was standing at one end of the hall.
Q. Well, was anyone with him?
A. Oh, there were several men around him.
Q. Were they talking?
A. Yes, they were talking, yes, sir.
Q. Now I understand you saw Pete Paridadi down there.
A. Yes, sir.
Q. He was a member of the union?
A. Yes, sir.
Q. Did this Chuck—what was his name?
A. Modine.
Q. He was a member of the union?
A. No, sir, he is not a member of 397.
Q. He was a permit worker?
A. Yes, sir.
Q. Was he a permit worker out at your plant, 1151 do you know, where he worked?
A. He worked at Granite City Steel too.
Q. Do you know where Paridadi worked?
A. I think he was working at Granite City Steel.
Q. Do you know whether he had any official position with the union?
A. Paridadi?
Q. Yes, sir.
A. No, sir.
Q. Now you then drove out alone, do I understand?
A. Yes, sir.
Q. And you went part way by Route 66?
A. 67 and 66, yes, sir.

Q. Well, part way by 66?

A. Yes, sir.

Q. 66 crosses the canal there on the bridge, doesn't it?

A. Yes, sir.

Q. Did you have to go on the bridge?

A. No, sir.

Q. You turned off before you got to the bridge?

A. Yes, sir.

Q. Now I will show you Exhibit 13-D, and I will inform you that this is a photograph from the bridge—

1152 taken from the bridge looking south.

A. Yes, sir.

Q. As you came there, can you tell on that photograph what road you came on?

A. I was down on the lower road, below the levee.

Q. Well, would that be on the water side or the land side?

A. No, sir, on the land side.

Q. On the land side.

Well now, the road is on the land side, isn't it? Here is the canal, and this is the land side (indicating). Can you tell from that picture how you came there?

A. Well—

Q. I will withdraw that and ask you this:

How close to the water were you when you got on top of the levee?

A. I don't know how far it is from the top of the levee to the water.

Q. Well, just your best judgment.

A. A couple of hundred feet, I imagine.

Q. And you were on the slope of the levee that slopes down to the water?

A. No, I wasn't on that. I was up on top of the

1153 levee.

Q. You stayed on top of the levee all of the time?

A. Yes, sir.

Q. How close were you to this piece of equipment that was operating?

A. Well, it was just off the levee from where I was on top of it.

Q. What?

A. It was just down the levee from where I was up on top of the levee.

Q. Now how far was it from you, would you say?

A. Oh, I would say about a hundred feet.

Q. Now what other cars or motor vehicles did you see on the top of the levee?

A. Well, there was a couple of cars up there, but I didn't pay too much attention to them.

Q. How close did you come to those cars?

A. Oh, I was a couple of hundred feet from the cars.

Q. What?

A. A couple of hundred feet from the cars.

Q. Did you ever get any closer than that?

A. A little bit, but not much.

Q. Was there anyone with you?

A. Oh, I was with the whole gang.

1154 Q. Well, who were they—who were some of them?

A. Oh, there was a whole bunch of them. I don't know them all.

Q. Where were you when you saw Mr. Green?

A. I was almost at the back of the crowd.

Q. Where was he when you first saw him?

A. He was coming—walking down the levee.

Q. You didn't see him come in his car, you just saw him out there?

A. Yes, sir.

Q. In the vicinity of this crowd?

A. Yes, sir.

Q. And he was walking up the levee?

A. Yes, sir.

Q. So that you didn't see him come there, you saw him walking around the track?

A. Yes, sir.

Q. Were there any men with them?

A. No, sir.

Q. Did you see where he went?

A. He went up to those dressed-up fellows. I don't know who they were.

Q. Did you see Mr. Wortman there?

A. No, sir.

1155 Q. Did you see Mr. Paridadi there?

A. Yes, sir.

Q. Where was he?

A. He was standing at the end of the crowd, at the edge of the crowd where I was.

Q. Did you see this man Chuck there?

A. Yes, sir.

Q. Where was he?

A. He was a just a little bit ahead of me.

Q. Now what these men said to the operator of the equipment, you don't know, except what they told you?

A. Yes, sir.

Q. Now did you see one of these cars up on the top of the levee drive away?

A. No, sir.

Q. How long did you stay there?

A. About twenty minutes.

Q. Did you hear Green say anything?

A. Yes, sir.

Q. Where was he when he said it?

A. Well, he come back into the crowd, away from those men, he was talking to, and he says, "O. K., fellows," he says, "Let's go."

1156 He says, "I don't want no violence or no trouble." And he says, "Go on back to your jobs." And that is when I left.

Q. Well, now, didn't you tell us on direct examination that Green said, "Let these men go, and go on back to your job!"?

A. No, sir.

Q. That wasn't said?

A. Yes, he said that, yes, sir.

Q. When did he say that?

A. When he came back in amongst the men, he said, "O. K., boys, let these men go."

Q. What men was he talking about?

A. The whole group of us, or the men he was talking about.

Q. Oh, he was just telling you to go, is that right?

Mr. FitzGerald: Wait a minute. Don't interrupt. He hasn't finished.

Q. All right, go ahead and finish.

A. He was talking to those dressed-up men that I don't know who they were, and then he stepped back into the crowd and says, "O. K., men, let these men go through." And he was referring to the men that he was talking to.

1157 Q. Well, did they leave then?

A. Well, I left. I don't know whether they left or not. He says, "Go on back to your jobs!"

Q. You didn't see any car drive away?

A. No, sir.

Q. Or anyone leave?

A. No, sir.

Q. You are positive that Green said, "We don't want any violence or any trouble!"?

A. Yes, sir.

Q. "Let these men go!"?

A. Yes, sir.

Q. Now have you been talking to anyone about this case?

A. Sir?

Q. Have you talked to anyone about this case?

A. Yes, sir.

Q. To whom?

A. Mr. Schaefer—Mr. FitzGerald.

Q. Who else?

A. Everybody.

Q. Everybody?

A. Yes, sir.

Q. Did you see a pick-up truck?

A. No, sir.

1158 Q. There up near this automobile?

A. No, sir.

I don't recall it.

Q. Where had Mr. Green been just before he spoke these words?

A. He was talking to those men.

Q. What men?

A. Those men that were dressed up.

Q. Where were they? Can you identify where they were?

A. They were just upon the levee, just about 200 feet from where I was, 150, something like that.

Q. Oh, they were 250 feet?

A. No, not 250, a hundred.

Q. Well, approximately that?

A. 100 or 150, something like that.

Q. How close were they to this car where these men were dressed—who were dressed up were, how close was Mr. Green to that car?

A. Well, they were fairly close, I don't know just exactly how close.

Q. Well, approximately?

A. Oh, I would say—

Q. Two feet?

A. No, it wasn't that close.

1159 Q. Well—

A. It was a bunch of men in between them and the car, I would say, 40, 50 feet from the cars.

Q. About 200 feet from you?

A. Yes, sir.

Q. That is when Mr. Green made this statement?

A. Yes, sir.

Q. Did he holler it out in a loud voice?

A. No. He walked back into the crowd, he was only about a hundred feet from me when he spoke it.

Q. Well, did he just speak it?

A. No, he hollered it out so everybody could hear it.

Q. "Go on back to work!"?

A. Yes, sir.

Q. What else did he say?

Mr. FitzGerald: If the Court please, it has been asked.

Mr. Alexander: I would like to have him answer it again.

The Court: What was the question?

Mr. Alexander: Just what did he say?

The Witness: He says, "Go on back to your job!"

The Court: He has answered that.

Mr. Alexander: I know he has answered it.

1160 The Court: Objection sustained.

Mr. Alexander: All right. I think that is all.

Mr. O'Neill: That is all.

The Court: Call the next.

(Witness excused.)

1161 CHARLES HENRY MODINE, called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. O'Neill.

Q. Will you state your name, please?

A. Charles Henry Modine.

Q. Now, Mr. Modine, will you talk loud enough so the ladies and gentlemen in the jury can hear you, as well as Mr. FitzGerald here.

Your name is Charles Modine?

A. Yes, sir.

Q. And you live where?

A. Glen Carbon.

Q. Are you the gentleman that the fellows sometimes call "Chuck"?

A. Yes, sir.

Q. What is your business?

A. I am a laborer.

Q. With what labor union are you associated?

A. Glen Carbon Local.

Q. Is that 474?

1162 A. Yes, sir.

Q. Were you a member of the Glen Carbon local in April, 1953?

A. Yes, sir.

Q. How many years have you been a member of that local?

A. Oh, about fifteen years.

Q. Where were you working on the 13th of April, 1953?

A. Granite City Steel, better known as the "Mill".

Q. Granite City Steel in Granite City?

A. Yes, sir.

Q. For the Rust Construction Company?

A. Yes, sir.

Q. How long have you been working on that job?

A. Oh, I was only working on that about two months at that time.

Q. Where did you work before that?

A. I was working on the levee, building a levee down below the power house.

Q. Sir?

A. I was working on the levee, down below the power house at Venice.

Q. Were you working for the Government directly for another contract?

A. I was working for Missouri Dredge Company.

163 Q. I see. Did you have any official position on the job at Granite City Steel like steward or foreman?

A. No, sir, not at that time.

Q. What kind of work were you doing?

A. I was a hod carrier, what they call hodcarrying.

Q. What time did you go to work that morning, if you remember?

A. Eight o'clock.

Q. Did you drive up there in your own car?

A. Yes, sir.

Q. Did you go directly there from your home?

A. Yes, sir.

Q. All right. After you got to work, what did you do then?

A. Well, we waited for the whistle to blow, starting time.

Q. When you started, that meant to start carrying the hod?

A. Get ready to work.

Q. All right. About how long did you work before something happened?

A. Oh, I would say maybe an hour and a half, two hours. I am not just exactly right.

1164 Q. Were you hod carrying that morning?

A. Yes, sir.

Q. What happened in about an hour and a half, two hours, as you recall?

A. Well, I was working around there, and I seen men starting to go out, and wondered where they was going, so I just went and picked up my bucket and jacket and followed along.

Q. Did you talk to anybody before you picked up your bucket and jacket?

A. No, sir.

Q. Were the men that left there members of the laborers union, if you know?

A. Well, yes, they were of different locals, I don't know just all of them.

Q. They were laborers, both?

A. Yes, sir.

Q. All right. Did you talk to anybody before you pulled out of there?

A. No, sir.

Q. They had a check system there, did they not? Did you check out as you left?

A. That is right; yes, sir.

Q. Where did you go?

1165 A. Well, I went through the parking lot, they had a double parking lot then, and I had to go way up and get my car, and I followed the other cars out.

Q. Did anybody go with you?

A. No, sir.

Q. Where did you go in your car in following the other cars?

A. Well, I was following the car, and I seen them going

out, and I just kept on following until they stopped, and we went out to the levee.

Q. Did you stop at the union hall on the way out there?

A. No, sir, I did not.

Q. You went right on down to the levee?

A. Yes, sir.

Q. When you started, did you know where you were going?

A. No, sir.

Q. You just took off behind the other cars?

A. That is right.

Q. Was there anybody in those other cars that you knew?

A. Well, no, I wouldn't know. There was some 1166 that I would know, but I wouldn't—couldn't say who they were.

Q. I see. You know they had been working on that job two months?

A. Yes, I knew they had been working on that job.

Q. When you got out to the levee, how did you go out, 67 and then crossed 66 to the bridge there?

A. I went right out 67, right to 66 and then over to the bridge.

Q. When you got on the bridge, where did you go, Chuck?

A. I just parked my car under the bridge and walked up to the levee.

Q. When you got there, what did you do?

A. Well, I just seen a bunch of men all standing around there and walked up.

Q. Were there a number of cars parked along there too?

A. Yes, there were.

Q. You parked your car, you said, under the bridge and walked up the levee?

A. Yes, sir.

Q. Would this picture, Defendants' Exhibit 4—I mean Government's Exhibit 4 and Defendants' 1167 Exhibit 1—

A. You will have to hold it pretty far away.

Q. Are you far-sighted?

A. Yes, sir.

Q. Do you recognize that scene?

A. Yes.

Q. Is that the bridge where you parked your car under?

A. Yes, sir.

Q. And you came down this road and along the top of the levee (indicating)?

A. Let's see. Which is this? Is this the Illinois side (indicating)?

Q. This is the Illinois side, and this is looking south from the bridge, coming south (indicating).

A. I parked back here, some place here, and walked up the levee there (indicating).

Q. I see. Well, you saw a number of men there. How many would you say was there, if you can make an estimate?

A. Oh, roughly, maybe 400, something like that, maybe less, I don't know for sure.

Q. Around 400?

A. Yes.

Q. Did you come down the top of the levee, down 1168 that road we looked at there on the picture?

A. No, I followed up along it.

Q. The side?

A. The side road, yes.

Q. Did you ever get up to the top of the levee?

A. Yes. After I walked in, I guess it was maybe half a mile up there from the bridge, up to where the men was there, where the equipment was.

Q. I see. Were other men walking along there at the same time?

A. Yes, sir.

Q. All right. What did you see up on the levee then besides the group of men, or groups of men?

A. Well, nothing until I got up there and just seen some equipment up there, and that is all I could see.

Q. Did you see any cars up there on top of the levee?

A. Yes.

Q. How many?

A. There was—I wouldn't say for sure how many there was.

Q. More than one?

A. Yes, sir.

Q. When you got up on top of the levee, you also 1169 saw some equipment?

A. Yes, but it was back further from where I was at.

Q. On what side of the levee was the equipment?

A. It was on my side, on the left side of the levee.

Q. On the canal side, you mean?

A. Yes.

Q. Was the equipment moving when you saw it?

A. No, sir.

Q. Was there anybody on it?

A. No, sir.

Q. Or anybody around it?

A. Well, there was some men around it, but I didn't go down that far. You could just see some men around it.

Q. All right. Did you see anybody out there that you knew?

A. Oh, just men that we worked with, I wouldn't know them.

Q. Do you know Jack Green?

A. Yes, sir.

Q. How long have you known him?

A. Oh, the last ten, fifteen years.

Q. Has that been during the period of time that you were a member of the Glen Carbon local?

A. Yes, sir.

1170 Q. Have you worked in the area over which the Granite City Local 397 has jurisdiction before this time?

A. Yes, sir.

Q. On other occasions?

A. On other occasions, yes, sir.

Q. And Jack Green was the business agent?

A. Yes, sir.

Q. Now will you tell the jury how you are assigned to work in another local or another district? Is that handled by your business agent or the business agent of the local where you move into?

A. That is by the business agent where you move into.

Q. In other words, if you come to 397 district, you are assigned by Jack Green out to the work, is that right?

A. Yes, sir.

Q. And you would be assigned by Jack Green out into the Granite City job about two months before this?

A. Yes, sir.

Q. That is the Granite City Steel job, all right. Did you see Jack Green there when you got out?

A. Yes, sir, I seen him.

Q. About where did you see him, Chuck?

1171 A. Well, he was right on top of the levee, talking to some men I don't know.

Q. Did you know any of the law officials of Madison county, the sheriff?

A. I know the sheriff just by sight.

Q. Do you know George Musso?

A. Yes, sir.

Q. He used to be deputy in your area, didn't he, in Collinsville?

A. I am not in Collinsville.

Q. Was he up on the levee there? Did you see him that day?

A. Yes, sir.

Q. All right. Did you know this contractor, Mr. Terry?

A. No, sir.

Q. Did anybody point him out to you that day there?

A. No, sir.

Q. Did you know his two bodyguards, these two wrestlers?

A. No, sir.

Q. Did anybody point them out to you?

A. No, sir.

Q. What was Jack doing when you saw him as you came down along the levee there?

1172 A. Well, he was just talking to them fellows up there. I don't know just what he was saying, I couldn't hear what he was saying.

Q. Were they fellows that you could distinguish from the men who were laborers that had come out to the job there?

A. Oh, yes.

Q. Well, how would you distinguish them?

A. Well, they were dressed up, they didn't work, they wasn't working clothes.

Q. Mr. Green was talking to them?

A. Yes, sir.

Q. Where were they with reference to any automobiles that were up there?

A. Sir?

Q. Where were they? Were they near or far, where were they? Were they close to the automobiles up there?

A. Yes, sir.

Q. Well, tell the jury then what happened, if you saw it, and what you saw.

A. I didn't see anything happen.

Q. You mean nobody swung at anybody?

A. No, sir.

Mr. Alexander: I object to telling the witness
1173 what he means.

Mr. O'Neill: I am sorry. Withdraw the question.

The Court: Objection is sustained.

The Witness: No, sir.

By Mr. O'Neill: Q. Did you see any violence or any fighting?

A. No, sir.

Q. Did you hear any of the conversation?

A. No, sir.

Q. How close did you get to the people?

A. Oh, he was about as far from here to where Mr. Green is, maybe a little further.

Q. Were there a considerable group up around up there?

A. Yes, sir.

Q. Where was Musso and Callahan, Mr. Musso and the sheriff?

A. They were right around there.

Q. In that group too?

A. Yes, sir.

Q. When you say the dressed-up men, you mean fellows other than Musso and Callahan?

A. Yes, sir.

Q. All in the group there?

1174 A. Yes, sir.

Q. All right. Did you see any of them do anything, or did you hear any of them say anything?

A. I didn't hear nothing, no, sir.

Q. Well, did you observe what happened to the group?

A. Well, the only thing—after they dispersed there—Mr. Green told the boys to open up, and go on back to their jobs.

Q. How did he say that, Chuck?

A. Well, he says, "Open up, boys, and let them through. We don't want no violence. Go on back to your jobs."

Mr. O'Neill: You can cross-examine.

Cross-Examination by Mr. Alexander.

Q. Before Green said that, did you see a car drive away from there?

A. No, sir.

Q. You never did see a car drive away?

A. No, sir.

Mr. FitzGerald: Object to that. He didn't say that.

The Court: He has answered.

1175 By Mr. Alexander: Q. Did you see a car being driven?

The Court: He has answered.

Mr. Alexander: That is what I thought. Mr. FitzGerald objected.

Mr. FitzGerald: You are putting words in his mouth.

Mr. Alexander: I have him on cross-examination here, and I have a right to. You know that, Mr. FitzGerald. I have a right to do that.

The Court: Go ahead, Mr. Alexander, and let's get through, both of you.

By Mr. Alexander: Q. Well, as a matter of fact, you did not see much of anything up there, did you?

A. That is right, I didn't see very much of anything.

Q. Didn't hear anything except these words of Green's?

A. That is all, yes, sir.

Q. And having been released by Green, you went back to work?

A. Yes, sir.

Q. And as a permit worker, in union matters your rules require that you follow the union orders?

A. I don't get you.

Q. In regard to union matters?

1176 A. We don't get no orders, only to go to work.

Q. That is all the orders you ever get?

A. Yes, sir.

Q. Now don't your union rules, when you go into a district where there is another local, don't the rules require you to follow the rules of that local union?

A. All the local unions is the same.

Q. Do they not require you to follow the rules of the local union where you have a permit to work?

A. I don't understand your question.

Q. In union matters, are you not required as a permit worker to follow the rules of the local jurisdiction in which you are working?

A. Yes, sir; yes, sir.

Q. In other words, if the union calls a strike on a plant it would be your duty to cease work and strike, wouldn't it, even though you don't belong to that local?

A. If what, sir, if they call a strike?

Q. Yes.

A. I don't know if they called any strikes, sir, there was no strike called there.

Q. No. We are not talking about what occurred

1177 there.

I am trying to find out from you what the requirements are with respect to a permit worker.

A. When you are working there as a permit man, you work the same as the local.

Q. The same as the union man?

A. Yes, sir.

Q. And you are under the jurisdiction of their business agent, aren't you?

A. Yes.

Q. Are you now a member of the Granite City Local?

A. No, sir.

Q. Do you still belong to Glen Carbon?

A. Yes, sir.

Q. How far is Glen Carbon from Granite City?

A. Oh, eighteen, twenty miles, something like that.

Q. What county is that in?

A. Madison County.

Q. Madison County?

A. Yes, sir.

Q. Have you ever occupied an official position in your local?

A. No. sir.

Q. Are you now a steward?

1178 A. No, sir.

Q. Have you ever been a steward?

A. Yes, sir.

Q. Where?

A. In Grantie City Steel.

Q. Appointed by whom?

A. Appointed by Jack Green.

Q. When?

A. After—oh, that was several months after this going up out to the levee.

Q. Now Mr. Falk was out at the Granite City also, wasn't he, as a permit laborer?

A. He was in a different gang than I was.

Q. Was he made steward of that gang?

A. I don't know.

Q. You don't know about that?

A. No, sir.

Mr. Alexander: I think that is all.

If we had Mr. Falk here, I would have liked to ask him one further question.

The Court: Mr. Who?

Mr. Alexander: Mr. Falk, who was the previous witness.

Mr. O'Neill: If he is still here, you may call
1179 him.

The Court: You are excused.

Call the next.

(Witness excused.)

Mr. O'Neill: We are waiting for Mr. Falk to be recalled, or do you want us to call a new one?

The Court: I suppose he is looking for Mr. Falk. I don't know.

Is he looking for him now?

Mr. O'Neill: Yes, sir. We asked him to.

The Court: See if he is here. He is here.

Ask your question.

1180 JOHN FALK, a witness heretofore called on behalf of the defendants, and having been heretofore first duly sworn, was recalled and further testified as follows:

Cross-Examination by Mr. Alexander.

Q. Mr. Falk, are you now a steward?

A. No, sir.

Q. Have you ever been?

A. No, sir.

Q. Never have been at any place?

A. No, sir.

Mr. Alexander: I think that is all.

Mr. O'Neill: That is all, John.

(Witness excused.)

Mr. Alexander: I wonder if we can have a few minutes, your Honor.

The Court: I am trying to get rid of them, but I will give you a few minutes. Let's take a recess for ten minutes. The jury may retire.

(Recess taken.)

1181 PETER JOHN PERADOTI, called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. FitzGerald.

Mr. FitzGerald: I am going to excuse Mr. Peradoti at this time. I have one witness—I might want you, Pete, in the morning, but I have a man here that is not connected in any way—

The Court: You may be excused, Mr. Peradoti.

Mr. FitzGerald: I will talk to you over at the hotel. If I can tell you to go on home, I will.

(Witness excused.)

1182 JEROME SCAGLIONE, called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. O'Neill.

Q. What is your name, sir?
A. Jerome Scaglione.
Q. Joe Scaglione?
A. Jerome.
Q. Jerome?
A. Yes, sir.
Q. Where do you live?
A. I live at Collinsville, Illinois.

Q. What is your business?

A. Well, I am a mechanic, I belong to the mechanics, 520, Hoisting engineers.

Q. Are you a member of the operating engineers Local 520 at East St. Louis?

A. See charter.

Mr. O'Neill: If it please the Court, we will excuse you until tomorrow morning, Jerry.

1183 If the Court please, we apologize.

The Witness: Thank you.

(Witness excused.)

PETER JOHN PERADOTI, called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. FitzGerald.

Q. What is your name, sir?

A. Peter John Peradoti.

Q. Where do you live?

A. I live in Collinsville, Illinois.

Q. What do you do?

A. I am a laborer.

Q. Are you connected with a particular laborer local?

A. Yes, sir.

Q. What one?

A. 397.

Q. That is Granite City?

A. Yes, sir.

Q. How long have you been a member of that local?

1184 A. Fifteen years.

Q. Were you a member of that local on the 13th of April, 1953?

A. I was, sir.

Q. Where were you working then, if you were working?

A. Granite City Steel.

Q. Was that for Granite City Steel Company or for someone else?

A. It was for Rust Engineers.

Q. What was your job there at that time?

A. I was general foreman over at the brick works.

Q. Well, you mean with the laborers?

A. Yes, sir, hod carriers.

Q. Now, were you there on the morning of April 13th?

A. Yes, sir.

Q. What time did you go to work?

A. I started seven o'clock that morning.

Q. Did you leave there at any time before noon?

A. Sir?

Q. Did you leave there before noon?

A. I did, sir.

Q. About what time?

A. Approximately ten o'clock.

Q. How did you happen to leave?

1185 A. Well, several of the boys got to talking, and there was an unfair contractor out on the Chain of Rocks bridge, so we decided to go out there.

Q. Did anyone tell you to go out there?

A. Sir?

Q. Did anyone tell you to go there?

A. No, sir.

Q. All right. When you left there, where did you go?

A. I went to the hall.

Q. Before you left, did you check out?

A. I did, yes, sir.

Q. When you got out of the hall, who was there that you remember, or how many people were there, if you don't know their names?

A. Oh, roughly guessing, when I got there it was between 50 and 60 men.

Q. Did you see Jack there, Jack Green?

A. No, sir. I seen him out in the yard.

Q. Did you talk to him?

A. No, sir.

Q. Did you go on to the levee?

A. Yes, sir.

Q. When you got out to the levee, where did you park your car, if you remember?

1186 A. I parked around about the levee.

Q. When you got up on top of the levee, did you see any cars on top of the levee?

A. I seen one up there.

Q. Where was it with reference to the place that Jack Green's car was?

A. When I got there, Jack Green's car wasn't there.

Q. Did you get out there before he did?

A. Yes, sir.

Q. Well, did you see him come up after you got there?

A. I seen him walking up there.

Q. Well, you didn't see him drive up, is that it?

A. No, sir.

Q. All right. Where was he when you saw him after your arrival on the levee, with reference to the car that you saw parked up there?

A. Well, he walked right by us. I was standing there on the levee.

Q. I know, but where did you see him on top of the levee?

A. I seen him over there talking to a group of men.

Q. Do you know any of those men?

A. I recognized Mr. Musso.

Q. Was he a deputy sheriff?

1187 A. Yes, sir.

Q. Do you know if you saw Callahan?

A. I didn't recognize him at the time, no, sir.

Q. Did you see him there that morning?

A. He was there.

Q. Did you see Green talk to him?

A. Yes, sir.

Q. Now at any time did you see him leave the place where he and Mr. Green talked, and go up to the place where this car was parked on top of the levee, or up near it?

A. Sir?

Q. Did you see Callahan go up to the place where the car was parked, or in that vicinity, after he and Jack Green had talked?

A. I never seen him, sir.

Q. What?

A. I never seen him go up there.

Q. Did you notice the persons who were about the car or in the neighborhood of the car that you saw parked on top of the levee?

A. Did I know him?

Q. No. Did you see any persons about that car?

A. Yes, I seen three men up there.

1188 Q. Do you know who they were?

A. Not at the time, I didn't.

Q. Were you told whose car it was?

A. I was told it was Mr. Terry's.

Q. Well now, did you see the sheriff, Callahan, or Callahan or Musso or any of the deputies go over at any time and talk to that group where Terry's car was?

A. I seen them shoving back and forth there.

Q. Who?

A. I wouldn't know which particular one it was.

Q. Well, you saw them. You mean the sheriff, the sheriff's deputies?

A. Yes, sir.

Q. Did they, after talking to the people around Terry's car, did they go back and have any talk with Green?

A. The deputies?

Q. Yes.

A. Yes, sir.

Q. Do you know how many times that happened?

A. No, sir, I wouldn't have no idea.

Q. Well now, after the time when they had talked with Green, and when they went up to the Terry car, did
1189 you see the Terry car leave?

A. Yes, sir, he—

Q. Just a moment. I have just asked if you saw the Terry car leave.

A. Yes, sir.

Q. And you said yes?

A. Yes, sir.

Q. Now before the Terry car left, did you see Jack Green go up in the neighborhood of the Terry car?

A. No, sir.

Q. Did you hear Jack Green say anything just before the Terry car left?

A. Yes, sir.

Jack Green hollered out and told us all to go back to our work. He didn't want no trouble up there.

Q. What did he say?

A. He told us to go back to our work, that he didn't want no trouble up there.

Q. Did he say anything about the Terry car?

A. No, sir.

Q. Did you see anybody—any violence up there at all, Pete?

A. None whatsoever.

1190 Q. What were the men doing?

A. Just walking up and down the levee, talking.

Mr. FitzGerald: You may ask.

Cross-Examination by Mr. Alexander.

Q. Mr. Peradoti, you have been connected with this union some fifteen years?

A. Yes, sir.

Q. How long have you known Mr. Green?

A. Oh, I have known him about that long.

Q. Have you taken an active part in the affairs of the union?

A. What do you mean by that, sir?

Q. Well, do you attend the meetings?

A. Yes, sir.

Q. You participate in the meetings?

A. Yes, sir.

Q. You have for a good many years?

A. Yes, sir.

Q. Have you ever been an officer of the union?

A. No, sir.

Q. Have you ever been a shop steward?

A. No, sir.

1191 Q. Have you been a personal friend of Mr. Green's in addition to being associated in the union work?

A. He is my friend, yes, sir.

Q. You have been friendly, gone places together?

A. No, sir.

Q. Associated together any?

A. No, sir.

Q. Now when was the first that you heard anything about this?

A. The morning of the 13th.

Q. Of April, 1953?

A. Yes, sir.

Q. Now just what was the first thing you heard about it?

A. Well, I just—we was just talking, and he said that there was an unfair contractor out there.

Q. Who said that?

A. Well, one of the boys. I don't remember who it was.

Q. Well, was it one of the boys who worked with you?

A. No, there was different jobs in there. I just—I was in charge of the one shop—one job.

Q. And then you just left?

1192 A. Yes, sir.

Q. Did anybody go with you?

A. Yes, sir.

Q. Who?

A. There was a couple of the boys went with me. They wanted to go along, and they asked me to go.

I said, "If you want to go, come on."

Q. Did you know where you were going?

A. I know where that job was at, yes, sir.

They said it was out at the Chain of Rocks bridge.

Q. Had you ever heard of a Mr. Terry before that day?

A. No, sir.

Q. Had you ever heard of any such controversy before that day?

A. No, sir.

Q. Had you attended a meeting of the union on April 9, 1953?

A. I don't remember if I did, sir.

Q. Well now, on April 9, 1953, there was a meeting of the union at which the officers were present, and the business agent was present, on which occasion during the course of the meeting the records show that a motion was

1193 made by Peradoti with respect to the cost of decorating the union hall.

Do you remember making that motion?

A. I don't remember making it. If it is on there, I made it.

Q. Well, you can examine the record book and see if that refreshes your memory about it.

A. I still don't remember making it.

Q. You don't remember it.

Now will you examine the first page of the record of the same meeting and read that first paragraph there, and see if you remember that occurring.

A. No, I don't remember that either.

Q. You don't remember that?

A. No, sir.

Q. So as far as you remember that now, the first you heard of this was when this man talked to you that morning?

A. Sir?

Q. As far as you know now, the first you heard of it was that morning, what this man told you, and you dropped your work and left?

A. Yes, sir.

Q. Now you were a general foreman on that job, 1194 weren't you?

A. Yes, sir.

Q. And as general foreman, you had supervision over the various groups of the labor force?

A. On that job—on that certain part of that job, yes, sir.

Q. And you had supervision of the stewards who handled each different group, didn't you?

A. I don't have no supervision over the stewards.

Q. You had supervision over the foreman of each group, however, didn't you?

A. Yes, sir.

Q. And as general foreman you were representative of the employer, the Rust Company, and also represented the union, didn't you?

A. Yes, sir.

Q. There wasn't any discussion between you and this man of anything further?

A. No, sir.

We just decided to go there.

Q. Then everybody else there on the job in the labor force decided to go too, didn't they?

A. I don't know if they all went or not, I left.

Q. Did you see any of them going ahead of you?

1195 A. No, sir, I never seen—I went up to the hall.

Q. Well, did you see any cars leaving when your car left?

A. Yes, sir.

Q. How many of them?

A. I wouldn't be able to judge that, I don't know. Them cars is all over the parking lot out there.

Q. Now when you got down to the hall, there were a lot of cars parked around the hall, weren't there, and along the street?

A. Well, I don't know if there were a lot of cars or not. I never paid that much attention.

Q. Well, where did you park?

A. I parked out on the street.

Q. Were there cars in the parking lot?

A. Not that I remember. I don't remember if there was or not.

Q. Do you know the name of the man that went with you to the hall?

A. Why, I know his first name. His first name is Joe, one was named Joe and one was named Vic.

Q. Oh, there were two of them, were there?

A. Yes, sir.

Q. Did you stay with them?

1196 A. They stayed with me, yes, sir.

Q. Where did you go?

A. What do you mean, where did I go?

Q. When you got to the hall.

A. I got out and went into the hall proper.

Q. All right. When you got into the hall proper, whom did you see there?

A. I saw some men in there, that is where they wait for work.

Q. Well, did you see anybody that you knew?

A. No, mostly them fellows that was there was different locals, out of different locals, I know them maybe by "Joe".

Q. Did you see Charlie Parker there?

A. Yes, sir.

Q. He was your financial secretary?

A. Yes, sir.

Q. Did you see Mr. Green there?

A. He was in his office when I seen Charlie.

Q. Did you see Rolla Durham there?

A. I seen him later.

Q. Was he in the hall?

A. He was in the yard when I seen him.

Q. You saw him in the hall?

1197 A. In the yard.

Q. Did you hear any conversation about this matter while you were in the hall?

A. No, not in the hall I didn't.

Q. Did you when you got out in the yard?

A. Yes, sir. We discussed it out there amongst ourselves.

Q. With whom did you discuss it?

A. With laborers, a bunch of laborers that was standing around out there.

Q. With anybody else?

A. No, sir.

Q. Did you discuss it with Mr. Green?

A. No, sir.

Q. He was your business representative, was he not?

A. Yes, sir.

Q. He was the man in charge of the handling of the affairs of this kind, wasn't he?

A. Would you mind repeating that, sir?

Q. The business agent, he was the man in charge of the duty of handling matters of this kind, wasn't he?

A. He handled the matters of 397, yes, sir.

Q. Well, that was your union, wasn't it?

A. Yes, sir.

1198 Q. And normally these problems of this nature would be submitted to the business agent, wouldn't they?

A. I don't know what you mean by that.

Q. Well, when a problem of this kind comes up, isn't it a business agent's job—isn't he employed by the union to handle the problems with the contractor?

A. Yes, sir.

Q. But you didn't feel any necessity of discussing it with him?

A. No, sir.

Q. Did you see any of your board of directors out there?

A. No, sir, I don't remember seeing them there.

Q. Or your other officers?

A. No, sir.

Q. You didn't feel you should discuss with them—

Mr. FitzGerald: Now if the Court please, whether he felt it or not—

The Court: He may answer.

The Witness: Sir?

The Court: I say, what was the question?

By Mr. Alexander: Q. Did you discuss it with any of the officers or directors?

1199 A. No, sir.

Q. Now you saw other members of your local there, gathered there, didn't you?

A. There were some of them, yes, sir.

Q. Can you name some of them other than those you have already named, some of the members of your local?

A. Well, I told you I seen Rolla Durham there.

Q. Yes. Now any others?

A. I couldn't name them. I know their first names, and I don't know their last.

Q. Well, did you see a number that you recognized as members of your union whose names you don't remember?

A. Yes, sir, there was a few of them.

Q. Well now, in talking with these men, what further did you learn about this trouble?

A. Well, we just decided we would go out there and see what was going on.

Q. Well, what did you learn? Did you learn anything further about what the situation was out there?

A. No, sir.

Q. Now who went with you out to the site of this job?

A. Sir?

Q. Who went with you out to this work site?

1200 A. Joe and Vic and Rolla went with me.

Q. That is Rolla Durham?

A. Yes, sir.

Q. Did I ask you, he is a nephew of Mr. Green's, is he not?

A. Sir?

Q. He is a nephew of Mr. Green's, isn't he?

A. Who, Rolla?

Q. Yes.

A. No, sir.

Q. Is he a member of the local?

A. He is my nephew.

Q. Your nephew?

A. Yes, sir.

Q. Was he a member of the local?

A. No, sir.

Q. Where did he live?

A. He lives in Collinsville.

Q. That is in the jurisdiction of the local?
A. No, sir.
Q. Is it not?
A. Not Collinsville, it is not.
Q. I thought the local covered all of Madison county.
A. No, it doesn't.
1201 Q. Do you live in Collinsville?
A. Yes, sir.
Q. Did you at that time?
A. Yes, sir.
Q. Well then, you didn't live within the jurisdiction of the local?
A. No, sir, never did live in the jurisdiction.
Q. Did the local have members that did not live in its jurisdiction?
A. Yes, sir, there are a lot of them.
Q. At that time, what was Mr. Durham doing?
A. Well, what do you mean?
Q. What was his work, employment?
A. He was working for Dow Chemical.
Q. As a laborer?
A. Yes, sir, I think he was a labor foreman. I don't know.
Q. Did he belong to any union?
A. He belonged to the Glen Carbon local.
Q. He was a permit worker there?
A. Sir?
Q. He was a permit worker?
A. He worked under our jurisdiction and he paid.
Q. He has been approved by the union as a foreman?
202 A. Yes, sir.
Q. Now have you stated everything that you were told about this at the hall?
A. Sir?

Q. Have you stated everything that was told you there at the hall?

A. Have I stated?

Q. Yes, that you remember at this time.

A. Well, when we was leaving there, Green hollered at us that—Mr. Green hollered at us that he didn't want us to get into any trouble, if we went out there we shouldn't get in no trouble.

Q. Where was Green at that time?

A. He was standing out there in the yard.

Q. Were there men around him?

A. No, sir. He just had come out from the back there, he has the door to his office back there.

Q. Now do you remember that you were interviewed by Mr. Granfield who sits back here with reference to this matter?

A. Yes, sir.

Q. Now that was within a comparatively short time after this happened, was it not? That is, within the next month or so.

1203 A. I don't remember when he was there. I don't remember what date it was.

Q. Well, wasn't it within two or three months after April 13, 1953?

A. I wouldn't be able to answer that question, because I don't know.

Q. Wasn't it just about a year ago in October, 1953?

A. I don't know.

Q. Well, you do remember that you talked to him?

A. Yes, sir.

Q. Where did he talk to you?

A. At my home.

Q. Now didn't you tell Mr. Granfield that, at that time, that from the general conversation in the hall you learned that a scab job was going to be run at the Chain of Rocks

canal and that the members of the local were going to go out to the canal project to see that the contractor did not have any scab labor there, and furthermore, to see that the contractor did not work a job without a union laborer?

A. I did not say that.

Q. You didn't say that, or that in substance to him?

A. No, sir.

1204 Q. Did you say that or that in substance to him at that time?

A. Would you please make that a little plainer?

Q. Now do you remember the statement I read?

A. Yes, sir.

Q. Did you tell that to Mr. Granfield when he interviewed you?

A. No, sir.

Q. Now you got out to the project. How long did you stay there?

A. Well, roughly guessing, I would say fifteen to twenty minutes, twenty-five.

Q. Did you know Mr. Green's car?

A. Sir?

Q. Did you know Mr. Green's car?

A. Yes, sir.

Q. Did you recognize it?

A. Yes, sir.

Q. How soon after you arrived there did you see Mr. Green?

A. Well, I am just guessing, I wouldn't have no definite time, I would say ten or fifteen minutes.

Q. Where was he when you first saw him?

A. I seen him walking when I saw him.

1205 Q. Walking where?

A. On top of the levee.

Q. How far from you?

A. Sir?

Q. How far from where you were?
A. He walked right by me.
Q. Did you see where he came from?
A. He came from down the levee.
Q. Was there anyone with him?
A. No, sir.
Q. Where did he go?
A. He walked up to them deputies.
Q. Who were the deputies?
A. Well, at the time I just know Mr. Musso.
Q. You saw Mr. Musso?
A. That is right.
Q. Were there any other men with Musso?
A. There was three other men with Musso that I know.
Q. Where were they with respect to the cars?
A. They were standing—oh, maybe fifty, a hundred feet. I don't know for sure, off from the car.
Q. Now did Mr. Green go up to that group?
A. To the deputies?
Q. Yes.
A. Yes, sir.
1206 Q. Did he talk with them?
A. Yes, sir.
Q. Could you hear what was said?
A. No, sir.
Q. Do you know the sheriff of the county?
A. I know him, yes, sir. I know Mr. Callahan.
Q. Was he there?
A. I didn't recognize him at the time. He was there though.
Q. But since recognizing him, do you know that he was there at that time?
A. Yes, sir.
Q. He was there?
A. Yes.

Q. Do you know Mr. Fricker?

A. Not personally, no, sir.

Q. Well, do you know him to recognize him?

A. I can recognize him now. I seen him since then.

Q. Did you see him there?

A. Well, I didn't know him at the time.

Q. Now what were these cars that you speak of? How many cars were there?

A. I only remember seeing one up there.

Q. Only one car up on the levee?

1207 A. Yes, sir.

Q. No other cars in its vicinity?

A. No, sir.

Q. No pick-up truck?

A. No, sir.

Q. Did you see any motor vehicles go by on the levee road going north?

A. No, sir.

Q. During the time you were there?

A. No, sir.

Q. Did you see the equipment that the contractor had there?

A. Yes, sir.

Q. Where was it?

A. It was on the west bank of the canal.

Q. Down on the berm close to the water?

A. Yes, sir.

Q. Was it operating when you saw it?

A. No, sir.

Q. Were there many men around it when you saw it?

A. No, sir. There was no men around it. There was some men down there.

Q. How many?

A. Oh, I would say thirty, forty.

1208 Q. Now were they there when you first came?

A. There was some there. I don't know how many.

Q. Now what did you see Mr. Green or any of the deputies do there after Green joined the deputies and talked to them?

A. They just talked. They didn't do nothing.

Q. Did any of them do anything?

A. No, sir.

Q. You didn't see any of them?

A. No, sir.

Q. Did Green leave that group at any time?

A. I never—I don't remember seeing him leaving.

Q. He stayed right there?

A. Yes, sir.

Q. Was there any walking back and forth from the Terry car to where that group was standing?

A. The deputies was walking back and forth.

Q. Do you know what deputy?

A. No, sir, I don't.

Q. Did you see Musso walking back and forth?

A. I don't remember seeing him.

Q. You don't remember seeing him. You saw him in the group?

A. Yes, sir.

1209 Q. Did he stay with that group?

A. As far as I know, he did, yes, sir.

Q. Now did you see anything happen down in the vicinity of Terry's car?

A. No, sir.

Q. Nothing at all?

A. No, sir.

Q. What did you go out there for that morning?

A. To see what was going on.

Q. Is that all?

A. Yes, sir.

Q. Didn't you testify before the grand jury in this case?

A. Yes, sir.

Q. Do you remember I questioned you?

A. Yes, sir.

Q. Well, did I not ask you that question and didn't you tell me: "I went out there to protect my job"?

A. Yes, sir, that was the general idea.

Q. The general idea of all of the crowd to go out there and protect their job, was it not?

A. No, sir, that was my idea.

Q. Your idea?

1210 A. Yes, sir.

Mr. Alexander: I think that is all.

The Court: Is that all of this witness?

Mr. FitzGerald: No further questions.

The Court: You are excused.

We will stop at this time.

(Witness excused.)

The Court: Remember the admonition of the court. Be in tomorrow morning at ten. You may be excused.

(Whereupon the jury retired.)

The Court: Court may be adjourned until tomorrow morning at ten.

(Whereupon these proceedings in the above-entitled case were adjourned until the following day, Thursday, September 23, 1954, at the hour of 10:00 o'clock a.m.)

1211 Court reconvened in the above-entitled cause at the hour of 10:00 o'clock a.m., September 23, 1954, pursuant to adjournment.

Present:

Same as before, to-wit:

Mr. Alexander, Mr. Oxtoby, and Mr. Stoddart, appearing on behalf of the Government;

Mr. O'Neill and Mr. FitzGerald, appearing on behalf of defendants.

1212 GEORGE D. HAYS, called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. FitzGerald.

Q. What is your name, please?

A. George D. Hays.

Q. You are the same George D. Hays who heretofore testified, are you not?

A. I am, sir.

The Clerk of the Court: Defendants' Exhibits Nos. 8, 9, 10, and 11 for identification purposes.

By Mr. FitzGerald: Q. Mr. Hays, I will ask you to look at Defendants' Exhibit No. 8, and state if you have seen that picture before.

A. I have, sir.

Q. Were you present at the time that that picture was taken?

A. I was.

Q. Does it correctly represent the machine which it purports to be a picture of?

1213 A. It does.

Q. I show you Defendants' Exhibit No. 9. Were you present when that picture was taken?

A. I was, sir.

Q. Does it correctly represent the machine of which it purports to be a picture?

A. It does, sir.

Q. I show you Defendants' Exhibit No. 10 and ask you if you were present when that picture was taken?

A. I was, sir.

Q. And does it correctly represent the machine of which it purports to be a picture?

A. It does, sir.

Q. I show you Defendants' Exhibit No. 11 and ask you if you were present when that picture was taken.

A. I was, sir.

Q. Does it correctly represent the machine of which the picture purports to be a picture?

A. It does, sir.

Q. Now where were those pictures taken?

A. They were taken east of Quincy, Illinois, alongside of a railroad track.

Q. When?

A. The day before yesterday, Tuesday afternoon.

1214 Q. Mr. Hays, are you familiar with moving and grading machinery?

A. Yes, sir.

Q. How long have you been familiar with the track type machinery used for purposes of grading and earth-moving?

A. Since 1929, sir.

Q. Are you familiar with the dozer, commonly and sometimes called "bulldozer"?

A. I am, sir.

Q. Track-type machine, is it?

A. Yes, sir.

Q. Can you describe it for the jury?

A. I will try, sir.

Q. Well, generally.

A. Would you clarify that a bit? Do you want the dimensions?

Q. No, I just want what type runs upon a track, what it does, how.

A. It is a heavy piece of equipment.

Q. Machinery?

A. And it has a track that goes around what they call a sprocket and wheel, and it is hinged so that as it rolls, the wheels and sprockets move in a forward 1215 motion.

It will lay this track ahead of it to keep it from sinking into the ground, and on the front end it has a blade that can be raised or lowered to push dirt or other objects before it.

Q. Now I will show you Defendants' Exhibit No. 8 and ask you if you can indicate from that picture, so that the jury may see what you are referring to, the track upon that dozer.

A. Yes, sir.

Q. That is a dozer?

A. That is, sir.

Q. Will you point the track out to the jury from the picture, please?

A. This is a track (indicating) here.

Mr. Alexander: If the Court please, we think there should be no pointing out until we have examined the pictures.

The Court: Objection sustained.

Mr. Alexander: We don't know what they are.

By Mr. FitzGerald:

Q. Where is the blade upon the dozer? You can answer that question.

A. Sir?

Q. Where is the blade that you referred to upon
1216 the machine?

A. It is in front of the motor and the water jacket on the cooling system of the motor, it is out in front of the whole unit.

Q. Can you describe the dimensions of the blade that is ordinarily used upon that dozer?

A. The dimensions?

Q. Yes.

A. Well, your dimensions will vary on some sizes. This size here has a blade approximately 10 feet by 4 feet. It is 10 feet wide and 4 feet high.

Mr. FitzGerald: Do you have any objection to his pointing out those things on these machines?

Mr. Alexander: I wonder, your Honor, if I can step out just a minute. I want to ask a man a question.

The Court: That is all right. In regard to this exhibit, is that correct?

Mr. Alexander: Yes. I don't know what this equipment is.

I would like to ask a few questions before Mr. FitzGerald continues.

1217 Mr. FitzGerald: Surely.

Mr. Alexander: Do you want me to go ahead now?

Mr. FitzGerald: Yes.

By Mr. Alexander: Q. You took these pictures within the last few days, or you observed the taking?

A. Yes, sir.

Q. Do you know what kind of equipment Mr. Wright, Jr. used on his contract on the Chain of Rocks bridge in March of 1953?

A. No, sir.

Q. Do you know what kind of equipment Mr. Terry used on his contract—in carrying out his contract?

A. No, sir.

Q. On the Chain of Rocks?

A. No, sir.

Q. Do you know what make of equipment this is?

A. Sir?

Q. Do you know what manufacturer made this equipment, this particular equipment?

A. Yes, sir.

Q. What?

A. Caterpillar Diesel.

Q. Are there different-sized tractors used in this 1218 work?

A. Yes, sir.

Q. There are different and various makes of tractors, are there?

A. Yes, sir.

Mr. Alexander: Now we object to the use of the pictures, if the Court please, unless there is shown some similarity with the equipment that was used in these jobs.

Mr. FitzGerald: I expect to follow up with that.

Mr. Alexander: I know, it should be followed up before the pictures are used.

Mr. FitzGerald: I may have to call you back, Mr. Hays, sir.

You may cross-examine, if you desire to.

Mr. Alexander: No cross-examination.

The Court: Call the next witness.

(Witness excused.)

1219 JEROME SCAGLIONE, a witness heretofore called on behalf of the defendants, and having been heretofore first duly sworn, resumed the stand and further testified as follows:

Direct Examination by Mr. FitzGerald.

Mr. Scaglione, I will ask you to look at Defendants' Exhibits 8, 9, 10 and 11, and ask you if you have seen those pictures before you came upon the stand.

A. Yes, sir, I did.

Q. I will ask you if you have also examined the Government's Exhibit No. 2, and particularly the Schedule A, Rates of Rental, which describes—and the only portion I am interested in is the description of the equipment which appears on the lefthand side of Schedule A, and also the quantity and unit description on the last page which is Schedule A of this contract.

Will you look at those and see if you have hithertofore examined them at my request?

A. Yes, sir, I did.

Q. Now I will ask you to look at Defendants' Exhibit 8. Let me hand those to you so you won't make an

1220 answer without looking at them, and I ask you what that picture purports to be a picture of.

A. That is a D-8 caterpillar tractor with a dozer blade.

Q. Is that the type of machine which is described in the contract between the United States Government and A. W. Terry, doing business as the Terry Engineering Company, which is Government's Exhibit No. 2?

A. It is.

Q. Now I ask you also to look at the same pages of the contract, which is marked Government's Exhibit No. 3, and is the contract between the United States and the Midway Excavating Company, and state whether or not Exhibit 8

is a type of machine which was provided for to be used in reference to that contract of the Midway Excavating Company, which is Government's Exhibit No. 3.

A. This is an identical description.

Q. Of the machine which you have identified as—did I say that is the Government's Exhibit?

A. That is right.

Q. As Defendants' Exhibit No. 8.

1221 A. Yes, sir.

Q. Now I show you Defendants' Exhibit No. 9, and ask you to state what that is.

A. That is also a caterpillar D-8 tractor with a push-type on the front and with the power units in the back hooked to a scraper unit.

Q. Now is that one of the machines which is described in each of those contracts?

A. It is, sir.

Q. The Government's Exhibit 2 and Exhibit 3?

A. Yes.

Q. Now I show you the Defendants' Exhibit No. 10 and ask you if you have seen that picture before.

A. Yes, sir.

Q. Is that one of the machines which is described in each of the contracts between the Government and the Terry Engineering Company, and the Government and the Midway Excavating Company?

A. It is.

Q. What type of machine is that?

A. That is the bulldozer unit with the push block pulling a scraper.

Q. Now I hand you Defendants' Exhibit No. 11 and ask you what that is.

1222 A. That is also the same type caterpillar tractor. It has the operator on there, pulling a scoop or a scraper as it is called.

Q. Is that also one of the machines—type of machines which is described in the contract to be used by both the Terry and the Midway Excavating Company?

A. It is, sir.

Q. Now will you tell me now something of the size of the ordinary caterpillar tractor which is used in the performance of the kind of work contemplated by the machinery which the Government contract between Mr. Terry and the Midway Construction Company require?

A. The length of it?

Q. Yes, the description of the type of machine.

A. Well, this would be about as long as from here to the end of the jury box, I imagine 10 foot wide, depending on the width they wanted the blade, and with it, this here has the lowering attachment for the handling of your blade, and also the arms here in which the blade is offset to slope either way you want it.

Q. Can you hear?

1223 A. Juror: It would be better if you talked a little louder.

By Mr. FitzGerald: Q. You look like you are pretty robust. Let them all hear. Will you talk a little louder? Tell that again now so they can hear it, will you?

A. Well, this type of unit is about as long—

Mr. Alexander: We object to the answer because it is not responsive. He asked him to describe the machinery called for in the contract.

By Mr. FitzGerald: Q. Yes, describe the machinery called for in the contract.

A. Well, the type of machine described in the contract is a caterpillar tractor about 15, 18 feet long, depending upon the placement of your blade and the pitch, and it is about 7, 8 feet wide, depending upon the width of the blade that you want to use on it.

Q. May there be blades of different widths put upon different caterpillars?

A. Yes, sir.

Q. May there also be blades of different widths put upon the same caterpillar?

1224 A. Yes, sir.

Q. All right. Go ahead.

A. Well, this type is the type of unit that you can break down and put a scraper behind it, or a push block in front of it to push the other scoop out as you enter the pit to load.

Q. Now is that one of the types of machines called for by each of these contracts?

A. It is, sir.

Q. Where does the driver or operator of that machine sit on that machine, on the type of machine described in the government contract?

A. Well, the picture here is a correct facsimile of those type of machines.

The operator sits—

Mr. Alexander: Just a moment. You need not show the picture until we get along.

Q. All right, where does he sit, regardless of the picture?

A. He sits well toward the back, as he has to manipulate two levers as he goes to pull and load and unload his scraper, and these are both back here, and also he has the one handle in which he lowers his blade in the front

1225 or lowers and raises his blade in the front.

That is also manipulated by the one handle in back of him here (indicating).

He sits almost back again the power unit of the tractor.

Q. In the type of power unit, the tractor, which is used as a dozer, approximately how far back of the front end

of the machine does the operator sit in the type of machine specified in this government contract?

A. Well, I just said he sits almost completely to the back.

Q. Well, can you give us approximately in the range of distances, if there are different machines, what is the shortest distance from the front and the longest, so we will have it, of that type described in the contract?

A. Oh, I would say about 12 feet.

Q. Now then, when sitting as the engineer, operating that caterpillar, how close down in front of the front end of the caterpillar—what is the nearest point to the front end of the caterpillar that he would be able to see?

A. Well, that would depend upon the type of ter-
1226 rain that he was working in sometimes.

Q. Assuming that it is fairly level terrain?

A. Oh, he might be able to see twenty, twenty-five feet ahead of him, approximately.

Q. I show you Defendants' Exhibit 11, and ask you if there is an attachment there to the tractor, and what that attachment is.

A. That is an attachment pulling a scraper, or a—

Q. Is that sometimes called a scoop?

A. A scoop, with your power units operating the scoop.

Q. Now how is the scraper or scoop operated by the operator of the tractor?

A. He has to reach back here and manipulate two handles which operate the—well, he turns in this position (illustrating), and he has to watch the loading and unloading of his tractor so that he doesn't cut too deep, or he doesn't put too much dirt, according to the fill that is required.

Q. How is the scoop part which takes up the dirt and the unloading part connected with the tractor?

A. They are connected by cables to your power unit.

Q. What happens to those cables during the operation, whether or not it is frequent or occasional, what happens, do they sometimes break?

1227 A. Quite frequently.

Q. I think I have a right to direct his attention—I am not trying to lead him—

The Court: Go ahead.

By Mr. FitzGerald:

Q. When the cable breaks, how is it repaired, or what is done about it?

A. Well, depending on where it is broken, we have a roll of cable in the back and we then have to pull it through, and get it hooked up to the power unit again in order to be able to resume work.

Q. The time of that repair, or when that change of cable is being made, is there anyone who ordinarily assists the operator of the tractor?

Mr. Alexander: To which we object, if the Court please.

The Court: I think he may answer.

The Witness: Yes, sir, there is a laborer there that helps us.

By Mr. FitzGerald:

Q. Now I wish you would look at Defendants' Exhibit No. 10, and tell the jury, if you please, what that is a picture of.

A. That is a picture which includes the tractor and the scraper as a unit with the driver.

Q. Now you are using the word "scraper." Is that also the scoop?

1228 A. That is the scoop, yes, sir.

Q. Now which portion of that picture, is it, the one at the right or at the left?

A. The scoop is to the right of the picture, and the tractor is to the right—is to the left.

Q. The tractor is in front of the scoop?

A. Yes, sir.

Q. I hand you Defendants' Exhibit 9, and ask you what that is a picture of.

A. That is also a picture of a caterpillar D-8, with the push block seeming to be attached to the scoop.

Q. And the front of it, what does that indicate?

A. That is a push block, that is where in unloading sometimes they are not able to pull themselves out when they are loading their scoop up, and therefore they have the push block in the front, which helps the tractor load and get out of the area in which they are loading or cutting.

Q. Now do all of those exhibits, 8, 9, 10 and 11, represent the equipment which each contractor—each contract, that between the Terry Engineering Company or A. W. Terry, doing business as the Terry Engineering Com-
1229 pany, and the Midway Excavating Company, agree in contracts to use upon the levee, wherever the work was to be done?

A. Those are the types of machine stipulated in those contracts, yes, sir.

The Court: Is that all of this witness?

Mr. FitzGerald: Yes, sir. I thought Mr. Alexander might want to examine him.

Mr. Alexander: Yes, sir, I do.

Cross-Examination by Mr. Alexander.

Q. Mr. Scaglione, where do you live?

A. Collinsville, Illinois.

Q. What is your business?

A. I am a mechanic and an operator.

Q. And operator?

A. Yes, sir.

Q. Operator of what?

A. Operating earth-moving equipment of various types.

Q. Well, are you in business as an owner of machines?

A. No, sir, I work out of the hoisting engineers Local 520 of the Charter.

Q. At East St. Louis?

A. Yes, sir.

1230 Q. Are you an officer of that union?

A. No, sir.

Q. You have had years of experience operating this kind of equipment?

A. I have been as a mechanic and operator since 1946, sir.

Q. What kind of jobs have you operated equipment like this on?

A. Well, I operated on the Dupo levee, on the levee there that was made at Granite City, and at Alton, Illinois, and at various times, at the new race track for Evkin Brothers at East St. Louis there at Kahokee Downs, I have operated all throughout this area.

Q. Have you operated over in Missouri?

A. No, sir, I did not.

Q. Just in Illinois?

A. Yes, sir.

Q. For what companies have you worked?

A. Well, I have worked for the C. Wilson; I have worked for Rivers Construction; I have worked for McWilliams Dredging Company; I have worked for LaCrosse Dredging Company; I have worked for Evkin Brothers.

1231 Q. I am referring to the operating of equipment of this kind.

A. Well, there would be several hundreds more, but sometimes we operate for just a couple of days, those are

the big operators, I mean we operated for a long period of time.

Q. Have you ever worked on a job similar to the job that was called for under these contracts?

A. Yes, sir, I have.

Q. Where?

A. On that same job there.

Q. Well, just what were you doing?

A. I was working as a mechanic there.

Q. Doing what?

A. Repairing equipment for McWilliams.

Q. That was repair work. I am talking as to an operator of the equipment.

A. Well, you see, we have to repair that equipment.

Q. Of course you have to repair that equipment when the equipment breaks—

Mr. FitzGerald: Let him finish. I object to counsel interrupting.

Mr. Alexander: I am asking him whether he has operated the machines on work of the kind called for in
1232 this contract.

A. Yes, sir, I have.

Q. Can you tell me what job?

A. I just stated those jobs.

Q. I understood you were working as a mechanic on those jobs.

A. And operating too.

Q. Operating too. All right.

Now, what specific job and time, can you tell me?

A. Well, it would be impossible to stipulate exactly what times because it varies. Sometimes a man doesn't show up and as a mechanic, if I am not busy, I will take the scoop and go out and work or take the dozer to go out to work, so it would be impossible for me.

Q. But you operated as out of the operators union?

A. Yes, sir.

Q. Did you also do the repair work, mechanic's work?

A. Yes, sir.

Q. Were you affiliated with any mechanical union?

A. Well, yes.

I stipulated there that the "C" charter is the mechanics local of the 320 hoisting engineers, but as
1233 such, our work is interrelated, and we operate.

Q. Well, are you affiliated with both of those unions?

A. We are part of the same union.

Q. They are part of the same union?

A. Yes.

Q. Now did you ever operate on a machine of this kind without having a laborer assigned to your machine?

A. No, sir, we did not.

Q. You never have?

A. No, sir.

Q. A laborer is assigned to every machine?

A. Not every machine, no, sir, depending upon the requirements.

Q. Well, just explain what you mean by that.

A. Well, on like scoops we may have a laborer for three or four scoops; it all depends on the—usually with the bulldozer, why, we have a laborer with them, depending on the type of work we are doing how fine a grading we are doing, or it all depends on the type of work that you are doing.

Q. Well, what I am getting at is: Have you ever operated a dozer on a job similar to this when you did
1234 not have a laborer to spot the work ahead of you?

A. No, sir, we did not.

Q. You never have?

A. No, sir.

Q. Have you ever seen an operating man, an engineer

of your union operate a dozer on work of this nature without having a laborer with him?

A. No, sir.

Q. Is there a laborer with each dozer?

A. No, sir. I stated it would depend on the type of work to be done.

Q. Well now, just suppose a man has three dozers on a job.

A. Yes, sir.

Q. Each one of those dozers as it goes along has to have a laborer spotting the work ahead, doesn't he, according to that?

A. It depends on the type of work that the operator is doing, yes, sir.

Q. I understood you to say that you never saw a dozer work on this type of work without having a spotter ahead of the machine.

A. I beg your pardon, sir. I think if you will 1235 recall, I said it depends on the type of work these dozers are doing.

Sometimes they have a laborer with two or three pieces of machinery, and sometimes, depending like, well, just like—

Q. Well, one laborer cannot spot for three machines, can he?

A. No, sir, he cannot.

Q. So some machines operate without a spotter, don't they?

A. Those that go into the same pit or follow the same line, yes, sir.

Q. You mean—will you explain that a little further?

A. Well, in cutting a levee, or building a levee, or a ditch of any kind, we have what we call a pit or section or certain sections of land which we take up and carry to this place here.

Now, there is a laborer there usually, and a laborer over here to where we are unloading. He tells us, in other words, he keeps grade so we don't go too deep there or pile it too high here.

He lines the grade for us and cleans the tractor,
1236 whatever is necessary to be done.

Usually a laborer—we have about two laborers with four, maybe five pieces of machinery there.

Q. Now that is construction work you are talking about, isn't it?

Mr. FitzGerald: He is talking about a levee.

The Witness: Yes, sir.

Mr. Alexander: Just a moment. He is answering the question.

Mr. FitzGerald: Don't put a misstatement before him.

Mr. Alexander: I have a right to lead this witness, and you know it.

The Court: That is right. Go ahead, Mr. Alexander.

By Mr. Alexander: Q. That was construction work you were talking about, was it not, constructing a levee?

A. Yes, sir.

Q. Do you know anything about what this work was on the levees that was carried on under these two contracts?

A. That stipulated projects, sir?

1237 Q. Yes. Do you know what the type of work was?

A. Yes, sir.

Q. That was being done.

A. Yes, sir.

Q. What was it?

A. Well, I assume they were dressing.

Q. No. I want to know whether you know. You say you are assuming?

A. Well, they were dressing the levee, yes, sir.

Q. Just evening it up?

A. Yes, sir.

Q. Filling little ditches from erosion?

A. Yes, sir.

Q. Now would you be surprised that during the months of February and March and April of 1953 on numerous days that five different operators out of your local work on the work called for by these contracts without having a laborer on the job?

A. I wouldn't be aware of that fact, sir.

Q. I say: Would you be surprised to learn it?

A. I am not surprised at anything.

Q. Then you do know that machines are and can be operated without laborers on some types of work?

A. Well, you can operate without a mechanic on 1238 some types of work too; but they keep us there.

Q. Now for instance, if a cable breaks, the operator—the operating engineer can fix it, can't he?

A. Yes, but it is much faster if he has got a little help, and usually your contractor don't want you to waste a minute's time if it is possible because those are high-priced machines and they are high-priced—

Q. That is right, and if there is enough work of that kind for a laborer or two laborers, it is economy to hire them, that is right, isn't it?

A. I am not a contractor, sir.

Q. But those laborers are not necessary, are they?

A. Well, that would depend upon your point of view. If you had to go out there last Monday, for instance, after that big rain—

Q. Well, we are not talking about last Monday. I am talking about this kind of work?

A. Well, sometimes they are not necessary and sometimes you could use two or three of them.

Q. Yes, and some contractors might feel that it was a matter of economy to have one there, and others might feel that he would take a chance.

A. He is taking a long chance, sir.

1239 Q. How often does a cable break under normal working conditions?

A. Well, if you are working in the sand and stuff like that, it depends on the skill of the operator too. A skilled operator sometimes can go along a week without breaking, and then an unskilled operator, one who was not familiar, may break one. I have had them break one every day.

Q. But on light work, where you are just evening up a levee, there is not nearly as much danger of breaking a cable as when you are working in heavy soil and doing heavy excavation, is there?

A. No, sir.

Q. Now will you look at Government's Exhibit 3, that is the Midway contract, and the schedule of equipment, and tell us what kinds of dozers is called for there, the tractor particularly?

A. It is a tractor dozer unit consisting of crawler-type units, diesel or gasoline, minimum draw, water, horse power, with dozer attachment, mobilization tractor dozer units, demobilization tractor dozer unit.

Q. Do you know what make of equipment Mr. Wright had?

A. No, sir, I do not.

1240 Q. Do you know what size?

A. Well, it stipulates the size in here.

Q. How does it, what in there stipulates the size?

A. 65 horse power.

Q. 65 horse power?

A. Yes, sir.

Q. Can you tell from that the length of the machine?

A. Yes. Your overall picture would be around 35 feet with your dozer unit, scraper, everything.

Q. Well, we are talking about just the tractor. Can you tell from that just how long his tractor was?

A. Yes, sir.

Q. How long?

A. Approximately 15 feet.

Q. Are you familiar with all makes of tractors?

A. Most makes of tractor used on levee equipment, yes, sir.

Q. Can you say that the tractor—that Mr. Wright was using—was like this tractor, indicating Exhibit 11, Defendants' Exhibit 11?

A. Well, the description here is identical with the picture.

Q. Identical with the picture?

A. Yes, sir.

1241 Q. What kind of a tractor is this shown on the picture?

A. This here is a caterpillar diesel.

Q. Made by the Caterpillar Company?

A. Yes, sir.

Q. Aren't there differences in the tractors made by other companies?

A. There are some differences, but not too much. They are all tractors, and they all pull scoops and they all load and unload dirt about the same way.

Q. Did you ever see a tractor that has, instead of the little seat shown there, a seat all the way across the top of the tractor?

A. Yes, sir. That there one has a seat all the way across.

Q. And the man can slide back and forth?

A. Yes, sir.

Q. And he can look out the side of his tractor on this side and on the other side, can he not?

A. No, sir, he can't look out on the other side.

Q. He can't do that?

A. He can't on the other side because his handles come here (indicating).

1242 He has to sit on the right-hand side to manipulate his handles.

He has to reach here (indicating), and pull his handles.

Q. He isn't always pulling handles, is he?

A. Well, he had better be if he wants to keep his scoop running.

Q. Let's see, you put the scoop down by manipulating the handle, don't you?

A. Yes, sir.

Q. And you move it a little bit until you get your cut started?

A. Yes, sir.

Q. Do you mean to say as he continues to make that cut, he has to manipulate that handle?

A. Certainly, he cannot make a cut unless he does.

Q. That is on the right-hand side?

A. He sits on the right-hand side, the handles are—there is—I beg your pardon. He sits on the left-hand side, as shown by the picture there, on that particular type tractor, and he has to reach there—you can see there for yourself, sir, how this handle is here (indicating).

Q. That is the handle for the scoop?

1243 A. Yes, sir, and he reaches over.

Q. And he can't reach back there and take it and peer around the side of the tractor, you say he can't do that?

A. Not on the right-hand side, no, sir.

Q. He can on the left side?

A. Yes, sir.

Q. All right.

Now then, the seat is so constructed that he can slide over and peer out the other side if he wants to, can't he?

A. I don't see how he would load his scoop that way.

Q. I am wondering, why do they make that seat all the way across.

A. That is on different types of operation, you are just asking me loading a scoop.

If you take the scoop off then, and you are using the blade in front or using it as a push "cat" or something else, then you don't have to.

Q. And yet you have seen many operators make that operation without having anyone to spot in front of them, have you not?

A. No, sir.

Q. Never seen one?

1244 A. No, sir.

Q. On the two contracts, you can't tell what the make of any machine is that was used on these jobs?

A. Well, let me see that, will you, please?

Mr. FitzGerald: What exhibit is that?

Mr. Alexander: That is 3, and we will give him 2 also.

The Witness: Well, here it stipulates a tractor.

By Mr. Alexander:

Q. The make of the machine, I asked you: Can you tell what the make of any machine was, the name of the manufacturer?

A. Well, this was not intended to name any manufacturer.

Q. We don't care what it was intended to.

Can you examine it and tell the name of any make of any of those machines?

A. This would fit many types of machines.

Q. Can you tell me what machines Mr. Wright had, what makes of machines?

A. I cannot tell you by this description, sir. This fits many tractors.

Q. That is just exactly what I mean.

The Court: There isn't anything on there that tells the name, is there?

1245 The Witness: No.

The Court: All right.

The Witness: It just merely stipulates horse power and the capacity that the machine must have.

By Mr. Alexander:

Q. That is true of this other tractor, isn't it?

A. Yes, sir.

Q. As you say, there are many types of tractors?

A. Yes, sir.

Q. And scoops?

A. Yes, sir. But they all do the same work in approximately the same manner and in the same way.

Q. As far as you know, these pictures that you examined are not pictures of the same make of machines that Mr. Wright used and Mr. Terry?

Mr. FitzGerald: He doesn't know what they are.

The Witness: That there is a description of the same type of machine.

Mr. Alexander: I am asking you—

The Court: He said he didn't know what machines he had.

Mr. Alexander: I know he did.

1246 The Court: That settles it, he did not know what kind of machines he had.

Mr. Alexander: That is what I am trying to get him to admit. If the Court is satisfied, I am.

The Court: I am satisfied.

Mr. FitzGerald: Why, he has said so several times.

Mr. Alexander: I think that is all.

The Court: Is there anything further of this witness?

Mr. FitzGerald: I now offer in connection—

The Court: Let me see those.

Any objection?

Mr. Alexander: Object to the pictures for the reason there is no proper foundation for their admission.

The Court: As I understand it, these are pictures that

are taken out here on some job in the county in which we are now trying this case, and the pictures were taken within the last two days?

Mr. FitzGerald: Yes, sir.

The Court: And the witness testifies that from
1247 the description given in the contract they are similar in character?

Mr. FitzGerald: That is right.

The Court: If there is any difference, I think the defendants could show it. I am going to admit them.

Now let's get along in this case.

Mr. FitzGerald: I wonder if I can have the jury look at those while this evidence is fresh in their minds.

The Court: Let me see those pictures once more.

Mr. FitzGerald: Yes, sir.

The Court: There is no objection to these photographs, I understand, yet because of any peculiarity or mud or things of that sort. I can't see any.

Mr. Alexander: No.

Mr. FitzGerald: They are not offered for that purpose.

Mr. Alexander: They are just machines. Our only objection is we don't know that they are the same type.

The Court: They may be admitted.

1248 (Whereupon said documents were received into evidence.)

Mr. FitzGerald: I wonder if you would look at these and pass them around, please.

The Court: Is there anything more?

Mr. FitzGerald: No.

Mr. Alexander: No.

The Court: Let's get along. Call the next witness.

(Witness excused.)

1249 JACK GREEN, one of the defendants herein, called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. O'Neill.

The Court: Let me ask you, gentlemen, as a matter of information: Isn't there a picture or two here, of one of two of these that were on the grounds, didn't you have that in your pictures?

Mr. Alexander: No, your Honor, there are no pictures of this equipment in the record before these.

The Court: None at all? I thought I saw a picture of one you introduced.

Mr. Alexander: There might have been one in the extreme distance, but I don't think so.

The Court: All right, gentlemen. Go ahead.

Well, perhaps in order to avoid interrupting, I think we will take a recess for ten minutes.

1250 By Mr. O'Neill: Q. Your name is Jack Green?

A. Yes, sir.

Q. And you live in Granite City, Illinois?

A. Yes, sir.

Q. How old are you, Mr. Green?

A. I was 51 years old the 9th day of September, 1954.

Q. How long have you lived in Granite City?

A. 51 years.

Q. That is all your life?

A. No. I was born in East St. Louis, and then we moved to Granite City when I was a month old.

Q. Are you married?

A. Yes, sir.

Q. What official position do you hold with Local 397?

A. I am the business representative of the International

Hod Carriers Building and Common Laborers Union of Granite City, Illinois, Local 397.

Q. Local 397 is a voluntary organization of working men?

A. You are right, sir.

Q. How long have you been connected with Local 397?

A. For from 1922.

Q. Do you hold any official positions down in Madison county or in Granite City now?

1251 A. No, sir.

Q. Have you in recent years?

A. Yes, up until about two years ago I was a member of the Police Commissioner's Board of Granite City for about four years, and Chairman of the Board for about two.

Q. You do not hold that job now?

A. No, sir.

Q. Are you familiar with the construction project of the Chain of Rocks canal?

A. Yes, sir.

Q. With reference to Local 397 in Granite City, does it have any territorial limits as to its jurisdiction?

A. Yes, sir. It has an area, I would say, approximately of ten square miles, on the west the Missis-ippi River, on the south the St. Clair county line, on the east up close to Collinsville, and on the north would be half way between Mitchell and Wood River, which would be about to the canal.

Q. That would be what is sometimes called the Cahokia drainage canal?

A. East side levee drainage canal, not Cahokia.

Q. Would you tell the jury with reference to the
1252 area which you have described where the Chain of Rocks canal generally was located?

A. The Chain of Rocks canal is—

Q. Just generally. Is it within that area, wholly within?

A. Yes, it is within that area on the Mississippi River.

Q. Now just briefly for background, when a work project of the size and character of the Chain of Rocks canal comes into territory which is under the jurisdiction of your union, how is the labor supplied for that project, who supplies it, primarily?

A. The Building Trades.

Q. Well, let's talk about the laborers union, that is 397. I mean, who do that sort of work.

A. We are part of the building trades.

Q. Well, does Local 397 itself send out the laborers on that project?

A. Yes, sir.

Q. How many members did you have in your opinion in 1953? Just in round figures.

A. I would say approximately 160.

Q. Did you have at any time more than that?

1253 A. Yes, we have had a lot of deaths in the last couple of years. I think we had about thirteen deaths in one or two years.

Q. So that it would be right at around 160?

A. Between 150 and 170 would catch it.

Q. Well, let's go back a little further:

From the time this project started, I believe the Government Colonel who testified here said it started in 1946 or 1947—from 1946 through now, what has been your average membership?

A. Well, through those years I would just have to guess.

I would say around a thousand or twelve hundred members.

Q. Of Local 397?

A. No, I thought you meant working there, Scheaf. I beg your pardon.

It runs—the highest, I think, when I went in there in 1938, it was 178 members.

Q. That has been about the highest membership?

A. Yes, sir.

Q. All right. Now when a job like the Chain of Rocks canal, or even the Rust Construction Company job at—where was that—at Granite City Steel?

1254 Mr. Alexander: Yes.

By Mr. O'Neill: Q. And the one at Dow, when those jobs would come along, where would the additional laborers come from?

A. Out of the Laborers 12, county, southwestern district council.

Q. Would you have men come from as far up as north of Staunton, Illinois, in Macoupin county?

A. Macoupin county, yes, sir.

Q. As far east as Pocahontas and Clinton county?

A. Yes, sir.

Q. Would you have men come from as far north as Mosier in Calhoun county?

A. Yes, sir.

Q. Is that part of the district?

A. Calhoun county is part of the district.

Q. And from as far south as Freeburg and Moduc and towns down in Monroe and counties south of St. Clair?

A. Randolph.

Q. There were twelve counties in this area?

A. That is right.

Q. All of them joining each other?

A. Adjoining counties.

1255 Q. Making what you call a district for the laborers union?

A. Twelve-county district council southwestern.

Q. What would you call that district?

A. Twelve county southwestern district council.

Q. I see. Now during the course of the construction of the Chain of Rocks canal, were there a great number of laborers employed on that project from time to time?

A. Yes, sir, there were.

Q. Could you estimate and say what the peak of the laborers that worked there was?

A. The peak of the laborers would be during the war, which was 2800, approximately 2800.

Q. That wasn't on the Chain of Rocks canal, was it, during the war?

A. You said during the Chain of Rocks canal. I thought you meant the peak of the local.

Q. No.

A. I would say approximately 600.

Q. On the canal job?

A. Yes. Now wait a minute. I am getting mixed up. You mean on the locks and the canal?

1256 Q. I mean the whole project, Jack.

A. Yes, I would say approximately six, seven hundred.

Q. That is the canal, the locks, the whole project up and down?

A. Yes, sir.

Q. Well, how did these men come to your union? I mean how did these men who come from other counties and other locals obtain employment on the canal?

A. We get them through the locals, our respective locals of where they belong through their business representatives.

Q. Let's say a contractor came in that needed 200 men. What would he do?

Q. He would come to our headquarters if it was in our jurisdiction.

Q. And tell you that he needed 200 men?

A. That is right.

Q. Then what would you do?

A. I would attempt to get them, if I didn't have a surplus in my own local. If I had the men in my own local, I would put them to work first.

Q. Where would you get the rest of them?

A. Then I would get them from the twelve counties.

Q. Whom would you contact to get them?

1257 A. I would contact the individual business agents. I have a file on them in my office.

Q. I see. All right. Have you any idea, Jack, how many people are connected with the laborers organization, the common laborers was employed on the Chain of Rocks canal and levee project about the first of the year, 1953, and down through April?

A. There was approximately four contractors and I would say approximately a hundred and fifty building laborers.

Q. Can you recall offhand the names of those contractors?

A. I believe I can. The Joseph Pole of Nevada, Missouri; the Masserman Construction Company of Kansas City, Missouri; the LaCrosse Dredging Company—I don't remember their main office; and there were a couple of small contractors there, I believe that Joof Construction—

Mr. Alexander: Who?

Mr. O'Neill: Joor Construction Company?

The Witness: Joor Construction Company. At 1258 that time there was a Well job on there, but I can't remember the contractor.

By Mr. O'Neill: Q. Just generally, to give the jury a picture of the background of this thing.

A. O. K.

Q. In addition to these large contractors which you

have enumerated, did they have people to whom they subcontracted portions of their work?

A. At times they do, yes.

Q. Were some operating on the job there that were subcontractors just generally?

A. Yes.

Q. Did the Government from time to time let smaller contractors such as the Terry contract and the Wright contract?

A. Yes, sir.

Q. Well, in connection with the operations of the levee and on other construction projects, did you have any under your duties as provided for in the by-laws of your union and in the International constitution of the locals, what were your duties generally as business agent?

A. My duties as a business agent is to represent the organization and in any of its agreements and con-
1259 tracts with the different contractors and companies to see that the provisions of the contracts are lived up to by the employer and the employe.

Q. All right. Now specifically there has been some discussion here about permit men. Were the men who were assigned to you from other locals by the business agents, when you sent out for them and they came to work in your district, permit workers?

A. No. They were what we call working dues.

Q. Now was a provision for those kind of men a uniform provision in the district in which all of the locals operated the same way?

A. Yes. It prevails, I would say, almost entirely throughout the twelve-county district.

Q. In other words, if you needed a number of men, and you called to Bob Wirtz, the business agent at Alton, and said, "Send me down 25 men," and they came down to work there, they would pay working dues into 397?

A. If they worked three days or more.

Q. And if you sent 25 men in response to a call from him on some project up in Alton, it would be the
1260 same thing in the Alton local?

A. They would pay the same.

Q. You did have a system of permits, didn't you?

A. Yes.

Q. Tell the jury very briefly about it, what was the permit system?

A. The free permit that has been discussed here was the set-up about ten years ago to take care of high school and college boys working through their vacation, and this was only a verbal agreement. It was not authorized in the union, and it is contrary to the International by-laws. We didn't need the money financially, and we told the lads to take their money and put it on their tuition, and we didn't take any money whatsoever from them.

Q. They were given permits to work in the district?

A. It was a free permit.

Q. Was that practice also carried on sometimes in connection with disabled veterans or fellows whose fathers had been disabled, and so forth?

A. It was. You had one on here, Mike Parmley, and in a lot of cases ministers and different organizations will call me and ask me, "Jack, can you pick some-
1261 body up for a month or so or two, and put them on their feet?" And I will write out that kind of a permit.

Q. That was the extent of the permit system in 397?

A. That is right.

Q. Along about the 23d of March, 1953, did you meet a man called Frank Luhning?

A. Yes, I did.

Q. Where did you meet him?

A. I met him on the east bank of the canal.

Q. About at what point? You have heard this conversation about the bridge, and so forth, so we can spot it closer.

A. Well, there is a little pumping station there, and Joseph Pole was working on one side of this pumping station, and the equipment that Luhning was running was working on the opposite side, I would say a distance of about a hundred yards.

Q. Now you have been familiar with the Ralph Wright or Midway Excavating Company operation before the 23d of March, hadn't you?

A. Yes, sir.

Q. Had you had any discussion with Mr. Wright or with anybody concerning the use of laborers in Wright's 1262 operations?

A. I don't understand that question.

Q. Well, referring specifically to the latter part of February when Wright was installing some "dead men" on the levee, just tell what your experience was in connection with that operation.

A. I was called out there—I can't tell you the approximate date—by the men and said that a piece of equipment which is a Hy-lift, there is a tractor with a bucket on the front which digs, as you have probably seen it dig basements—

Q. Yes.

A. —and there were men working with that Hy-lift that were not our members, and I believe they said they didn't know who they were and for me to come out and check it.

Q. All right. Did you?

A. Yes.

Q. What did you do?

A. I went out and I talked to the operator, and I found out that Wright had the contract to put in some "dead men".

Q. What are "dead men"?

A. "Dead men" are telephone poles, or a lot of
1263 times they use them for an anchor. They put them down into the ground and put a cable around them with clamps, and then leave the top of the cable stick out and then cover the hole back up, and then they are used for different anchors, sometimes guy lines and different things on construction.

In this case I think the attempt was to tie up boats that were going up and down the river on them.

Q. I see. Do you remember whom you talked to about that job and about the laborers working on it?

A. No, I don't remember whom I talked to, but when I—I believe—I can't be too positive—that the men working with the equipment were civil service workers.

Q. Yes.

A. And I went over and contacted in St. Louis in the Federal Building Mr. Ollie Taylor, whom I have known for years and who has also been in charge of the labor relations, I believe you call him, in accordance with construction on federal work.

Q. For Government engineers?

A. Yes.

Q. He was a member of the Corps of Engineers?
1264 A. Yes, sir.

Q. All right. What, as the result of your conversation with Mr. Taylor, what was done?

A. I was able to put a man there with the equipment.

Q. And then you say put a man there, you mean a laborer was assigned to do part of the work there?

A. Yes, I put the man swamping with the Hy-lift and working on the "dead men".

Q. Well, did that man replace the civil service workers?

A. I don't know whether they were actually—they were helping them, Schaef, or whether they just once in a while

got in there and took part in it. I don't know who they were.

Q. But the contract itself was Ralph Wright's contract?

A. That is right.

Q. Did you talk to Mr. Wright at that time?

A. No, sir, I did not.

Q. Was he around there?

A. I never saw him.

Q. Do you remember, Jack, the first time you met Ralph Wright, Jr.?

A. The first time I met Ralph Wright, Jr., was in 1265 the headquarters.

Q. Let me ask you something: Hadn't you met him before, years before? Do you know his father?

A. Oh, Senior. I know Senior for twenty-five years, but not Junior. There are two of them.

Q. You did not know Junior as a boy around his father's home?

A. I don't remember him.

Q. O. K. I just had a mistaken apprehension. Well, you had known his father, Ralph Wright, Sr., for a great many years?

A. I swamped on the crane for Ralph Wright, Sr., in around 1934.

Q. At that time what was he doing?

A. We were working on a levee for a construction company in East St. Louis.

Q. Was Ralph Wright, Sr., an operator then at that time?

A. Yes, he was.

Q. And you swamped for him?

A. I was the swamper.

Q. All right. Going back then again to the 23rd of March, and your meeting with Ralph—with Frank Luhning, just tell us very briefly what happened.

1266 A. The steward on the Joseph Pole job contacted me in my office and said there was equipment working alongside of their job and that there was no laborer with it.

Q. All right. The people on the Pole job, what kind of work were they doing?

A. The fellow that called me was named Oliver Woodworth and he was a steward, he was swamping.

Q. On the Pole job?

A. That is right.

Q. Do you know what kind of work they were doing where Woodworth was swamping?

A. No.

In a general way, I think construction, of putting in tile and doing grading in there, I think they were doing some work on a levee.

Q. Were they using heavy equipment similar to the equipment Wright was using?

A. Yes.

Q. Now Woodworth reported to you that they did not have a laborer on the Wright job?

A. Yes.

Q. So what did you do?

A. I told them that I would check it.

1267 Q. All right. Did you check him?

A. Yes, I think it was the next day.

Q. Would that be the 23rd of March?

A. Well, the date I can't tell you.

Q. All right.

A. But I went—I went out the next day, and he was making the rounds with the dozer.

I waited until he got back to the end, and he stopped.

He got off, and I said to him, "I am Jack Green, and represent the building laborers."

And he shook hands with me.

And I asked him, "Who does the equipment belong to?"

And I think he said, "Junior."

And I asked him, "Junior Wright?"

And he says, "Yes."

And I said, well, "he should have a laborer here with him."

And he said, "Well,—"

I told him to have Junior call me.

Q. Did you tell him to have his boss contact you that night and to be on the levee the next day at noon?

1268 A. No, I didn't say I would be on the levee.

I told him, I said, "You have Junior get in touch with me," or "call me," words to that effect, and I went on.

Q. What did you then do, went back to the hall?

A. I went back.

Q. Did you talk to Junior Wright as a result of that conversation with Mr. Luhning?

A. Yes. He called me that night.

Q. Do you remember where you were when he called you?

A. Yes, I was home. And I told you I didn't remember the date, Schaef, but I checked the date and the date was on a Monday, March 23rd.

Q. That was the night he called you?

A. Yes.

Q. How were you able to check the date?

A. I remember I was at a meeting and I have a regular meeting the fourth Monday in every month at the Tri-City laborers' temple association, of which I am a board member, and when I came home my wife was giving my sister-in-law a permanent and she give me—

Q. Let's not repeat any conversation. Did she tell you you had a call?

1269 A. She told me she wished I would answer it because it had been ringing all evening.

Q. All right. Did Mr. Wright ring you again?

A. Yes.

Q. And you talked to him?

A. Yes, I talked to him.

Q. What did he say to you, and what did you say to him?

A. He said, "What are you trying to do up there?" And I said, "Well, I think you ought to have a laborer up there."

And he said, "Well, I am not going to put one on there, and if you interfere with it, I will get the FBI after you, or the NLRB," which is the National Labor Relations Board.

Q. What did you say to him?

A. I said, "Junior, from some of the things I heard you pull on that McWilliams jobs out there, you got a lot of nerve, and if you want to get the FBI and the Labor Board after me, you go ahead."

Q. Was that the extent of your conversation?

A. That was all. He hung up.

Q. All right. Do you know whether Mr. Wright operated on the next day and the 25th?

1270 Let me ask you first this question:

As a result of that conversation with Junior Wright, what did you do from the standpoint of business agent in the union?

A. When I got in, I went to St. Louis and got in touch with Mr. Ollie Taylor and I explained to him, as I did in the past any time I got a grievance, I went over to Mr. Taylor, and any time he had one he got in touch with me.

Q. May I ask you just as a matter of information and background for the jury here, you had in March of 1953 been furnishing laborers out on those levee contracts for six or seven years, hadn't you?

A. Will you say that again, Schaef?

Q. I say, by March of 1953 you had been sending laborers out on the Chain of Rocks canal or levee job for six or seven years?

A. Yes, the whole job.

Q. And was the business of going in and talking to the men in the Corps of Engineers in charge of the labor relations a general practice of yours?

A. Only when we got in disputes.

Q. You went in then to see Mr. Taylor?

1271 A. Yes.

Q. Do you remember when you went in to see him?

A. I couldn't tell you the date, but it was a short time—it was in that short time.

Q. After that phone call?

A. Yes, after the phone call.

Q. What was the conversation you had with Mr. Taylor?

Mr. Alexander: To which we object, if the Court please, the conversation.

Mr. Oxtoby: Hearsay, your Honor.

Mr. O'Neill: I think the whole business, your Honor, is a matter of one unit, I mean it was the Government and Mr. Wright and these men.

The Court: I cannot think that a conversation with the personnel of the Engineers would be proper in this case.

Mr. O'Neill: If the Court please, just one thought: It has been testified here on behalf of the Government by witness after witness, and there isn't any controversy about it, that the general supervision of those contracts was under the Corps of Engineers.

1272 Mr. Alexander: Only the direction of where they worked.

Mr. O'Neill: The Government rented the equipment—

Mr. Alexander: That was the rental of equipment, the Government did not operate it. The contractor operated it. It is just hearsay.

The Court: I cannot see it is proper. Objection sustained.

By Mr. O'Neill: Q. Did you explain to Mr. Taylor what your trouble was?

A. Yes.

Q. Well, as a result of that conversation, did the Government—

Mr. Stoddart: Objection.

Mr. Oxtoby: Asking what is, if anything, leading. He is putting words in his mouth.

Mr. Stoddart: Object to the form of the question. He is going to then say what the person did. He should ask him what happened as a result of the conversation.

1273 Mr. Oxtoby: Certainly on direct examination that is true.

The Court: As a result of that—Finish your question.

Mr. O'Neill: I will say, your Honor, I will ask the witness not to answer this, Mr. Green, until after the Government can make all of the objections they want.

The Court: Go ahead and finish the question.

By Mr. O'Neill: Q. As a result of that conversation, did the Government do anything about the work on that job?

Now don't answer.

The Court: Objection is overruled. I think he may answer.

Mr. Oxtoby: How would he know?

Mr. Alexander: Did the Government do it?

The Court: Ask him what the Government did after that. That is proper.

Mr. O'Neill: All right.

Q. What did the Government do after your conversation with Mr. Taylor?

Now wait a minute.

1274 Mr. Alexander: Now that is all right. If he knows what the Government did, that is all right.

The Witness: I know he sent me back and told me my problem was with the contractor.

Mr. Alexander: Just a moment. He is telling—

Mr. O'Neill: No, Jack. The question is:

Q. What did the Government do? What action did they take, if any? Not what conversation they had.

Did they take any action?

A. No.

Q. All righ Well then, prior to March 26th, did you personally take any further action?

A. No.

Q. In addition to the levee and canal job at that time did you have a number of laborers working on construction projects in your district at the Dow Chemical?

A. Yes, sir.

Q. And at the Granite City Steel?

A. Yes, sir.

Q. And at various other places on construction and other projects?

1275 A. Yes, sir.

Q. You could not give us an estimate about how many men were working out of your local at that time?

A. Around 1100.

Q. From day to day was it your business as business agent to assign these men out to these various places to see that they were employed?

A. Yes, sir.

Q. That the requests for workers were filled, and so forth?

A. Yes, sir.

Q. Do you know what occurred on the 26th of March down on the levee at the Wright job, of your own knowledge?

A. Not of my own knowledge.

Q. Did you see Junior Wright on that day?

A. No.

Q. Did you get a report of what occurred down there from your men?

A. Yes.

Q. Also a report of what had occurred to the Terry job?

A. That is right.

Q. Do you remember who gave you the report as to
1276 what occurred on the Wright job?

A. No, I don't.

Q. Did it come from a steward or foreman on some other construction project out there?

A. It come from that job. I would have to say specifically who, I cannot remember.

Q. All right. Did Junior Wright come to your headquarters on or about the 26th of March?

A. He came to my headquarters around that time, I can't be sure about the date.

Q. Well, to go back to one more question about Frank Luhning.

Did you ever have any further or other conversation with Frank Luhning than the one you testified to about here?

A. No, sir.

Q. About what time in the day, do you recall, was it that Ralph Wright, Jr., came to your office?

A. I would say early in the morning, around nine, ten o'clock.

Q. Is that the best of your recollection as to when it was?

A. Yes.

Q. Was it after the man had stopped his work out
1277 on the levee?

A. I think it was.

Q. Well, do you recall your conversation with him generally?

A. I was talking to a gentleman when he come. I don't know whether it was a contractor or someone. There were a lot of men in the hall, and he finally got me by the arm and he said, "I am Junior Wright."

Q. That was the first time you met him, as you recall it?

A. The first time I met him to know him.

And he said, "You still say you want labor out there?"

And I said, "Yes."

He said, "Well, I am not going to put one out there. I will move the equipment out."

And I said, "That is up to you."

Q. I will ask you if he said this to you:

"We have done a lot of work on government contracts and never did need a laborer."?

A. I don't remember him saying that.

Q. Actually, they had used a laborer on the "dead man" job a month before, hadn't they?

A. That is right.

1278 Mr. Oxtoby: Objection, suggestive and leading, "actually". Object to the form of the question.

The Court: Objection sustained.

Mr. Oxtoby: I move the answer be stricken.

The Court: It may be stricken. I didn't hear. Was there any? If there was, it may be stricken.

Go ahead.

By Mr. O'Neill: Q. Now in order to keep things in a chronological order, did you learn on that same day that another group of laborers had had some conversation with some operators on equipment being operated by the Terry Company?

A. Yes, I did.

Q. How did you get that information, generally?

A. I got it through the men coming into the hall there around the jobs.

Q. You don't know off of what construction project the men—

Mr. Stoddart: Object, leading and suggestive.

Mr. O'Neill: All right. I was only trying to save time.

Mr. Stoddart: You cannot save time by asking
1279 leading questions.

Mr. Oxtoby: You cannot save time by having you testify.

The Court: Gentlemen, if you are objecting, I will sustain it.

Go ahead with your question.

By Mr. O'Neill: Q. Do you know on what construction project these men were working?

A. They were working on the canal, but I don't know what contractor they were working for.

Q. To refresh your memory, do you know whether or not the Masserman Construction Company had a project there?

A. Yes, it did.

Q. Do you know whether the men came from that project?

If you don't know, say so, it is O.K.

A. Do I know if they came from that project?

Q. Do you know whether they did or not?

A. I believe they did.

Q. Did you personally have any conversation on the 26th of March with Mr. Terry?

A. No, I didn't.

Q. Who was the next person, if you recall, that talked to you about both the Wright and the Terry jobs?

1280 A. Ralph Wright, Sr.

Q. Do you remember when he talked to you about them?

A. He called me around in that area. The date I don't remember—I couldn't tell you the date.

Q. Well, how long would you say it was after the 26th of March?

A. I would say it was right around that time.

Q. Was it prior to the 13th of April?

A. Yes.

Q. Mr. Green, do you know what relation— Well, what position Ralph Wright, Sr., held at that time?

A. He was the business agent of the operators engineers Local 520 of East St. Louis.

Q. Was he any relation to Ralph Wright, Jr., the president of the Midway Excavating Company?

A. He is the father.

Q. All right. Do you remember generally what that telephone conversation was?

First of all, where did he call you, at home or in the hall?

A. I believe he called me at the hall.

Q. Do you remember generally what that conversation was?

A. Well—

1281 Mr. Oxtoby: Same objection, hearsay, as to what the conversation was.

Mr. Alexander: Just whether he remembered.

Mr. O'Neill: I will give another preliminary question, your Honor:

Q. Did he call you in regard to the contracts of Terry and Ralph Wright, Jr.?

A. Yes.

Q. Now, what was that conversation?

Mr. Alexander: To which we object, if the Court please. They can call Ralph Wright, Sr., if they want to prove his part in it. It is purely hearsay.

The Court: Yes, I think that is right. I can't see where —he was the father, that still does not make him an agent.

Mr. O'Neill: We will connect it up, your Honor. The conversation will show the agency.

Mr. Alexander: You know that is not the way to prove agency.

The Court: Objection sustained.

Mr. Alexander: You cannot prove agency that way.

1282 By Mr. O'Neill: Q. Was Ralph Wright, Jr., a member of the operating engineers?

A. Yes, sir.

Q. And Terry?

A. Yes, sir.

Q. Was Ralph Wright, Sr., the business agent for the operating engineers?

A. Yes, sir.

Q. Will you tell the jury whether or not the conversation was in connection with business involving your labor union which you represented, Local 397, and business involving the Local 520 which Ralph Wright, Sr., represented? You can answer that yes or no, without telling what the conversation is.

A. No, it wasn't.

The Court: Go ahead, please.

By Mr. O'Neill: Well, don't answer this question before they make an objection, because I feel they will.

Q. Was this conversation in connection with the business of the Midway Excavating Company of which Ralph Wright, Jr., was president and the Terry Company of
1283 which Terry was a member of the Local 520?

A. Could I answer that?

Mr. Alexander: Just yes or no.

The Witness: Yes.

By Mr. O'Neill: Q. Now, what was the conversation?

Mr. Alexander: To which we object. That is no proof of agency.

The Court: I think the objection will be sustained.

By Mr. O'Neill: All right. Now, don't answer this question, but listen to it and then let them make their objection:

Q. I will ask you if the conversation concerned what Local 397 wanted Ralph Wright, Jr. and Terry to do in connection with their contract on the levee?

Mr. Oxtoby: Same objection. He is doing indirectly what he cannot do directly, and the objection to hearsay was sustained. Now he is reciting the conversation.

The Court: This is a conversation with the father, was it not?

Mr. O'Neill: Yes.

The Court: Objection sustained.

1284 Mr. Alexander: There has been no relationship shown.

The Court: Objection sustained.

Mr. O'Neill: All right.

Don't answer this, Jack, until after objection is made—

Mr. Oxtoby: I don't like the way counsel is making these statements, "until an objection is made." It is an insinuation. If the question is proper, we will not object.

Mr. O'Neill: Have I made any insinuations? If I have, I apologize.

The Court: Go ahead. Let's get along with this lawsuit.

By Mr. O'Neill: Q. I will ask you if this conversation you had with Ralph Wright, Sr., involved a jurisdictional dispute between your unions—

The Court: He may answer.

The Witness: Yes.

Mr. O'Neill: All right.

Q. Now, did you hear from anyone else besides Ralph Wright, Sr., in connection with this work up on the levee?

1285 A. Yes.

Q. Who?

A. The man who said he was A. W. Terry.

Q. Well, I am talking about prior to the 13th of April. Did you hear from A. W. Terry befor the 13th of April?

A. No, I didn't—only—

Q. You were in the court room here when Mr. Terry testified, were you not?

A. Yes.

Q. Was there any time during that period between the 26th of March and the 13th of April when you were gone from Granite City for any length of time?

A. No, sir.

Q. What, customarily, was your daily rounds?

A. Well, I make that canal job about on an average of once a week anyhow, and sometimes twice. I make— I generally try to take in most of the jobs.

Q. I am referring more specifically, Jack, to your accessibility to a telephone. What did you do in the morning, where did you go?

A. We go to headquarters in the morning at seven o'clock.

Q. How long would you be there?

1286 A. I stay there, I never leave before ten.

Q. Are you back there during the day?

A. Yes, I come in and out of there.

Q. In addition to that, let me ask you: How many telephones did they have at headquarters?

A. We have a telephone and an extension.

Q. Are you listed in the phone book?

A. We are listed in the phone book, and the number says if the office does not answer, to call my home.

Q. And gives the number at your home?

A. And we also have a secretary there.

Q. Do you know of any time during that period when you and your wife were away from home in the evening for any extended period?

A. No, I don't.

Q. Well, in addition to your being at the union hall up to around ten in the morning and then coming back during

the daytime, is there somebody at the union hall all the time?

A. Charles Parker, the financial secretary, works from 7:00 until 11:30, takes 30 minutes for dinner, comes back at 12:00, and stays until 3:30.

Q. All right. Now, during the period between the
1287 26th of March, and, let's say, the 12th of April, Sunday, the 12th of April, did you or anybody in your headquarters receive a call from A. W. Terry, a telephone call?

A. Did you say between the 12th—

Q. Between the 26th of March up until the 12th of April, Sunday, April 12?

A. No, sir.

Q. Was there any telephone calls at your home?

A. No, sir.

Q. Did anybody make a call at headquarters leaving a message for you to call Mr. Terry?

A. Absolutely not.

Q. Do you recall Mr. Terry testifying in response to a question, or have you ever talked to him either over the telephone or personally?

A. No, I tried many times, but I never was able to get a hold of him, and he never would answer my calls.

Q. Did you ever get a call from him or refuse to answer any one of his calls?

Mr. Oxtoby: That is repetitious. He has answered that.

The Court: Objection sustained.

1288 Mr. O'Neill: All right.

Q. Coming now to the 13th of April, did you—what time did you go to work that morning, if you recall, down at the local's office?

A. I would say around 7:15.

Q. When you got there, what did you find with reference to any telephone calls from Mr. Terry?

A. Charlie Parker, the secretary, gave me a slip that said Terry had called.

Q. Did it say anything else?

A. Yes, he said he told Parker that he was going to start working his equipment without our laborers, and told him the exact spot he would be, south of the canal bridge.

Q. All right. What did you do when you got that message?

A. I just throwed it in on my desk and went on about my work.

Q. You were busy that morning?

A. I was, I am busy every morning.

Q. All right. Generally what were you doing that morning, as you recall?

A. I had a lot of men in there, and I was sending the men out to the different jobs.

1289 There were different contractors on there, to get men, and I was sending the men to different jobs.

Q. Around eight o'clock, did anybody come to the headquarters in reference to the job up on the levee there?

A. No.

Q. Well, did you get a telephone call?

A. I got a second call.

Q. From whom?

A. I got a call from Terry.

Q. That was around eight o'clock?

A. I would say it was around eight o'clock.

Q. Do you recall that conversation?

A. Yes.

Q. Well, what did he say and what did you say?

A. He asked for Green, and I said, "This is Green." And he says, "This is Terry."

He says, "I am up at the canal. I have talked to my attorney, and he says that I don't have to use your laborers, and I am going to work without you."

Q. Is that the extent of the conversation?

A. No. He says, "Are you coming up here?"

1290 I says, "Yes, I will be there."

Q. Did you at that time see Jack Fricker?"

A. No.

Q. All right, what did you do following that conversation?

A. I got a call then from Jack Fricker, and Jack, I believe, said the sheriff had an order to go up on a job at the canal bridge, "What is the trouble?"

And I said, "There is no trouble. I will be able to straighten it out," or words to that effect, and I believe that is all of the conversation.

Q. All right, going back to that telephone conversation with Mr. Terry, you heard him testify in court here the other day?

A. I heard him testify.

Q. Did he say to you or this, in effect:

"Jack, we are going to start this job out here this morning and I can't afford to put a laborer on each one of these tractors," and you said to him, "Well, you put a laborer on them if you are going to start them"?

A. That is absolutely not true.

Q. As a matter of fact—

1291 Mr. Oxtoby: Object to the form of the question. "As a matter of fact."

The Court: Wait a moment. Let him give the question. Go ahead, Mr. O'Neill.

By Mr. O'Neill: Q. How many pieces of equipment did he have up there that morning?

Mr. Alexander: To which we object. I will withdraw that.

The Court: Go ahead. Answer that.

The Witness: How many did he have that morning?

By Mr. O'Neill: Q. Yes.

A. I hadn't been up there yet.

Q. I mean, do you know ultimately how many he had up there?

A. I know at one time he had—

Q. Wait a minute, on the morning of April 13th did you go up to the levee?

A. Yes.

Q. How many pieces of equipment did he have up there?

A. One piece of equipment.

Q. All right. He said to you over the phone, "I can't afford to put a laborer on each of these tractors." He only had one up there, didn't he?

1292 A. That is all I saw.

Mr. Oxtoby: Object to counsel's testifying. It calls for a conclusion. He can ask if that was said or this said. The answer is yes or no.

The Court: He has answered, objection is overruled. Go ahead.

By Mr. O'Neill: Q. Did you ever tell Mr. Terry that you had to have a laborer on each piece of equipment?

A. I never talked to Mr. Terry until that morning.

Q. Well, did you tell him that morning or any other time?

A. No, sir.

Q. I will ask you: As a general rule, in connection with the operation of your union, does your union or did your union ever insist that you put a laborer on every piece of equipment, heavy equipment, that was being operated on these kinds of contracts?

A. No, sir.

Q. What was the usual custom or practice?

A. Just enough to do the work, take care of our jurisdiction.

Q. Well, from your experience over all of the years

that you have been with this union, would you tell
1293 the jury what in your experience would be or was the greatest number of laborers that were required on the greatest number of machines?

Mr. Alexander: If the Court please, I think that is going outside the realm of this case. There are all kinds of jobs, all kinds of work.

The Court: I think he can answer that. The jury may consider it. Go ahead, answer the question.

Mr. O'Neill: I think, your Honor, I would rather rephrase it, I am sorry, I misstated it.

By Mr. O'Neill: Q. The least number of laborers that would be required on the greatest number of machines?

A. Well, the least number could be one, that is all you could have.

Q. That is for sure. Well, how many machines has one laborer operated for or worked for?

A. There are a lot of machines that have one laborer with one machine.

Q. I mean in one operation, one laborer assigned to how many machines?

A. There is no set amount.

1294 Q. Well, could you tell the jury, just in your own recollection and experience, the greatest number of machines that you have had one laborer working for, that you recall?

A. I would say three and possibly four.

Q. Well now, I will ask you if you said this to Mr. Terry:

"You will put a laborer on each one of these tractors if you are going to start it—if you are going to run it"?

A. I never said that to anyone.

Q. Had he up to that time told you how many pieces of equipment he was using out there?

A. No.

Q. Did he say to you: "What are you going to do? Are you going to put up a picket line?"

A. No, he never mentioned anything about a picket line, sir.

Q. Did he ask you that?

A. No.

Q. I will ask you if he said to you, "What are you going to do then?"

And you said, "Never you mind, I will stop you"?

1295 A. I believe I did.

Q. All right. I will ask you if you recall whether or not he said, "Well, Jack, I have no use for laborers out there. This is a finished grading job," and he said, "Oh—" and you said, "Oh you will find something for them to do"?

A. No, sir.

Q. Did you ever send men out on a job where there wasn't anything for them to do?

A. No, sir.

Mr. Alexander: To which we object.

The Court: Objection sustained.

By Mr. O'Neill: Q. Did Mr. Terry say to you, "You know there isn't anything for them to do at all," and you said, "Well, let them carry water for the operator when he gets thirsty"?

A. No, sir.

Q. Now I will ask you if he said to you, "Well, isn't there some way that we can only put on one laborer instead of a laborer for each machine"?

A. No, sir.

Q. Why do you say he did not ask you that question?

A. Because I never talked to him. He never discussed the operations of the machines.

1296 Q. I am on page 18:

I will ask you if he had asked you if he could put

one laborer on several machines, what would you have said?

Mr. Alexander: To which we object. What he would do.

Mr. Oxtoby: Objection.

Mr. Stoddart: I also object.

The Court: I sustain all three of you.

Mr. Stoddart: I don't think I said anything.

The Court: I will sustain the other two. Go ahead.

By Mr. O'Neill: Q. Did you tell him, "No, you are going to have a laborer on each tractor."?

A. No.

Q. All right, that conversation or the parts that you have told about occurred about eight o'clock in the morning?

A. That is right.

Q. Did you go out to the levee that morning?

A. Yes, I did.

Q. Who went with you?

A. By myself.

Q. What was your purpose in going out there?

1297 A. I went out there to— I had got a call from Jack Fricker about that time, Deputy Sheriff, and was told about the trouble, and I thought, "Well, I will go out and see if I can work it out."

I left all my work in the headquarters, and told Charlie, "I am going to run up and see if I can straighten it out."

Q. Is that the ordinary and customary way that you handle adjustments with contractors when a labor dispute was involved?

A. Yes, it is.

Q. How long have you been business agent of Local 397?

A. 16 years.

Q. In the 16 years that you have been business agent

of Local 397, have they ever thrown a picket line around anywhere?

A. No, sir.

Q. Never put a picket line up?

A. No, sir.

Q. Well, you went out to the levee by yourself, how did you get out there, if you recall?

A. Well, I went over from the headquarters out 67, our headquarters is on Route 67, over to Route 66, and then turned left over to the canal bridge.

1298 Q. Did you go over the bridge?

A. I did go over the bridge.

Q. When you went over the bridge, where did you go?

A. I looked down to see if I could see any equipment working from the bridge, and I couldn't see anyone.

I went on across the bridge, turned around, and came back and around under the bridge, and stopped my machine on the approach of the levee.

I got out, and—

Q. Whom did you see there?

A. Deputy Sheriff Jack Fricker, who walked towards me.

Q. Did you see the equipment by that time?

A. No, I was on the side of the levee, the east side, and the equipment, I imagine, was on the west side of the levee.

Q. Well, had you spotted, either crossing the bridge or coming back, any?

A. I thought I seen a piece of equipment coming down from the other end, from the north end, whether that was it or not, I didn't know. I don't know.

Q. Did you see Mr. Terry?

A. No, sir.

Q. All right, where did you stop, Jack?

1299 You say on the approach up to the bridge?

A. Yes, on the approach up to the canal, on the ramp where you go up on the canal levee.

Q. You don't know whether you have seen these pictures we have been flashing around here for a couple of days, is that the same man we have been talking to these men about as we have gone along, the same ramp?

A. Yes, sir, I think it is.

Q. Is that the ramp that is shown, would you say that was the ramp that is shown in these pictures?

A. Yes, that is it.

Q. That is Government Exhibits 1 and 1-A.

A. Yes.

Q. And the ramp is the road leading from what they have identified as the slue road up to the road on top of the levee?

A. The slue road is down below and this is the levee road on top of the levee.

Q. The road on top of the levee is shown in 1 and the other in 1-A?

A. North and south, it shows.

Q. Did you go clear to the top of the levee?

A. No, I stopped about at the bottom.

1300 Q. At that time you say you did not see Terry's car?

A. I saw his car.

Q. Did you see any individuals around it?

A. No.

Q. Or in it?

A. No, I did not.

Q. How far was the car from where you stopped to talk to Fricker?

A. Oh, I would say a hundred yards—about.

Q. Did you have a conversation with Fricker there then?

A. Yes, I did.

Q. What was that conversation?

A. Fricker told me that Mr. Terry was up there in the car, and that he had two bodyguards with him, and he says that they were armed.

Q. All right, what did you tell him?

A. I said, "Well, I am going back to my headquarters, and I will be back."

Q. Did you go on up there on the levee, or what did you do?

A. No, I turned around and left him and went back.

Q. When you went back to your headquarters, what was the purpose of going back there?

A. My intention was to get in touch with my chair-
1301 man and have him call the local Executive Board and report the accident to him—report the action to him and see what they want.

Q. I will hand you an instrument— I got the copy, Mark— I don't know whether the original is available, I don't know where the original is, Government Exhibit 7, that is the Constitution and By-Laws—

Mr. Alexander: You are going to point out some specific provisions?

Mr. O'Neill: Yes. They have got Government Exhibit 7. This is the 1953, this is not the new one, like the one you got. The new one is the green one.

Mr. Alexander: You can call it our exhibit number.

By Mr. O'Neill: Q. I ask you, indicating a section on page 8 of the exhibit, which is identified as the Constitution of local union—

The Court: Is it admitted as an exhibit? What is the number if it is?

Mr. O'Neill: It is admitted as Exhibit 7, your Honor.

1302 The Court: All right, just for the record.

Mr. Alexander: He may refer to it as Exhibit 7, we have no objection to that.

By Mr. O'Neill: Q. I read to you this provision:

Mr. Alexander: Why not have him look at it and see if it is a provision, and I would like to see it before you read it.

Mr. O'Neill: All right.

Is that a part of the provisions of the By-Laws, look at the place I have got marked there, of the Constitution of your union?

The Witness: Yes.

By Mr. O'Neill: Q. And it was under that provision that you intended to act?

A. Yes, sir, to call my executive.

Mr. Alexander: I just wanted to know. Is it where the pencil mark is?

Mr. O'Neill: Yes.

Mr. Alexander: It will be all right to offer that and read it, if you want to read it. I think it is better to read it into the record.

Mr. O'Neill: The provision reads:

1303 "It shall have the power to take any action—"

This is talking about the Executive Board—

Mr. Alexander: Why don't you read the Executive Board section first?

Mr. O'Neill: All right, Section 9:

"The Executive Board of this local shall consist of the president, the vice-president, the recording and corresponding secretary, the financial secretary, the treasurer, and two other members, not officers elected at the usual election and in the same manner as the officers of the local.

"In the event that the office of financial secretary and the office of treasurer have been combined into one office, the secretary-treasurer, then there shall be elected three

other members to the executive office board who are not officers. A majority of it shall constitute a quorum. It shall have the power to take any action that the local
1304 union can take which, because of emergency, cannot be delayed until the next regular meeting."

I think that is all that is necessary here.

Is that the Executive Board to which you intended to refer this matter that morning?

The Witness: Yes, sir.

By Mr. O'Neill: Q. All right, you went back to the headquarters, is that right?

A. Yes.

Q. Did you refer it to the Executive Board?

Mr. Alexander: Ask him what he did. We object to th form.

By Mr. O'Neill: Q. What did you do? I am sorry.

A. I went back to the headquarters, and there were—oh, approximately 30 or 40 men there, and I told them what I had run into up there.

Q. What was that?

A. That a contractor had guards up there with guns, and that I was going to go to the different jobs and get the different members of the Executive Board.

1305 Q. All right. Who were the members of the Executive Board, if you recall?

A. Ametth Courtway—

Q. Wait just a minute; before you make that trip, how about us making a trip for lunch, your Honor, or do you want to run on.

The Court: That is all right with me.

Ladies and gentlemen, you will be excused.

Be back at two o'clock promptly.

(Whereupon the jury retired.)

The Court: Court will be adjourned until two o'clock.

(Whereupon these proceedings in the above-entitled case were adjourned until 2:00 o'clock of this same day.)

1306 Court reconvened in the above-entitled cause at the hour of 2:00 o'clock p. m., September 23, 1954, pursuant to recess.

Present:

Same as before, to-wit:

Mr. Alexander, Mr. Oxtoby, and Mr. Stoddart, appearing on behalf of the Government;

Mr. O'Neill, and Mr. FitzGerald, appearing on behalf of the defendants.

1307 The Court: You may examine.

JACK GREEN, having previously been duly sworn, resumed the stand, was further examined and testified as follows:

Direct Examination by Mr. O'Neill (Continued).

Q. Mr. Green, we were talking this morning about you had come back to the headquarters after you had been told that Mr. Terry was out on the levee with a couple of armed bodyguards.

When you got back to the headquarters, did you send for the Executive Board or go out to get them?

A. No, I reported in there—the group that was in there, what I had found out there.

Q. All right, now do you remember this gentleman from the Masserman Construction Company, Frank Brock, who was a Government witness the other day here, said that he had come to headquarters that morning?

A. Yes, sir.

Q. Was he there when you got back?

1308 A. Yes, sir.

Q. Did he ask for three men out on the job?

A. He asked for some men, I don't remember what the amount was.

Q. Was that at that time?

A. Yes.

Q. Do you remember whether he asked you what the men who were—

Mr. Stoddart: Now wait a minute.

Mr. Alexander: Just a moment. Don't lead the witness.

Mr. Stoddart: You are leading the witness.

The Court: Go ahead.

Mr. O'Neill: I am discussing testimony that was given by the Government's witness, your Honor.

The Court: Let's get some place. What is the question before us, or have we one?

Mr. Alexander: The point is that he can ask what the conversation was.

The Court: Yes, ask him that. Go ahead.

Are you trying to impeach? What is this?

Mr. O'Neill: No, sir, I am just laying a background.

1309 The Court: Just ask him what the conversation was.

By Mr. O'Neill: Q. Do you remember what the conversation was with Mr. Brock concerning the men who were out there, around there?

A. He said, "Where is all the men coming from, Jack?" And I says, "I don't know."

Q. All right, now during the period of time that you were there at headquarters also, did you have a telephone conversation with Mr. Willard Lauer who at that time was project manager for the Rust Engineering Company up at —was that at Dow?

A. I had a telephone call. I can't say it was Mr. Lauer, but it was from the Granite City Steel.

Q. Granite City Steel, all right.

Do you recall that conversation?

A. He asked—I believe he said, "the men walked off, what is the trouble?"

And I said, "Oh, we called them off; they will be back in a little while," something to that effect.

Q. Did you say to him this, or this in effect:

"I called them down here for a little meeting."?

1310 A. I said something to that order. I don't know what the exact words were.

Q. Was there anything in that conversation about the payroll?

A. Yes, he asked—he said, "Do they expect pay?"

And I said, "Well, if they walked off, their pay stops."

Q. Did he ask you what the meeting was about?

A. No.

Q. At that time will you tell the jury whether or not you actually had called the men for a little meeting?

A. No, I hadn't.

Q. What was the situation and why did you make that statement?

A. I thought the men had probably walked off and I was trying to cover up for them.

Q. You mean walked off from the job at the Rust Construction Company?

A. Yes, sir.

Q. Why?

A. Well, we had a couple of pretty serious jurisdictional disputes over there.

Q. At the Rust Construction Company?

1311 A. Yes, we did.

Q. And were they pending at the time you had this conversation with the man from the company?

A. Yes, they were.

Q. They had not been settled at that time?

A. About a week later, everything but the laborers walked off.

Q. You mean at the Dow plant?

A. No, at the Granite City Steel.

Q. Everybody but the laborers walked off the job?

A. A short time after that.

Q. So that when you told him that you had called the men for a little meeting, why was it that you told him that?

A. To cover up for them and try to contact them to get them back.

Q. I see. At that time did you know that they had walked off to go up to the canal job?

A. No, I didn't.

Q. Had you sent for anybody down at Granite City Steel to come up and go to the canal job?

A. No, I didn't.

Q. About that same time there were men that had come in from various jobs that I believe testified for the
1312 Government the other day. Do you know Fred Behrend from Edwardsville?

A. Yes, I do.

Q. Do you remember whether you saw him on the 13th of April or not?

A. No, I couldn't say.

Q. How about Walter William Woodworth, Jr.?

A. No.

Q. I will ask you if you said before leaving the hall in Granite City this, or this in effect: To follow the cars that were going out to the levee and to circle the equipment that was out there.

A. No, sir.

Q. Did you tell the men anything as they went out to the levee job?

A. The men that when I come back into the hall and reported that, it seemed like they got a little disturbed or

a little aggravated over it, and I could feel from the general conversation that they were going out there.

And I said, "If you do go out there, don't get in any trouble."

Q. Now as business agent, did you have any right or authority under the rules and constitution of Local 1313 397 to prohibit these men from going any place?

A. No.

Q. Do you know the man that testified, William E. Bauer?

A. Yes, I have seen him before.

Q. He is not a member of local 397?

A. No.

Q. I will ask you if you said, while in Bauer's presence, or while the men were there, getting ready to go out to the canal,—

Mr. Stoddart: Wait a minute. May it please the Court he said he didn't know Mr. Bauer, so how can he make a statement—

Mr. Alexander: I thought he said he did.

The Witness: I said I knew Mr. Bauer.

Mr. Alexander: I think he did.

Mr. Stoddart: I thought he said no.

Will you read the answer?

(Answer read back.)

By Mr. O'Neill: Q. Did you say to him or to the men who were assembled at the hall there, "Surround the high lift." Did you?

A. No.

Q. Was there a high lift out on the job there?

1314 A. Yes, the piece of equipment that I saw was a—

Q. Well, did you see any high lift out on the job?

A. No, I never saw it.

Q. Did you have any knowledge of any high lift on the job?

A. No.

Q. Do you know Clyde Boyd who was foreman down at the Rust Engineering in Granite City Steel, Clyde Boyd?

A. Yes, sir.

Q. Is he a member of 397?

A. Yes, he is.

Q. Did you tell him that you wanted Pearl Ketcham or anybody else down at the union hall for a meeting on that day?

Mr. Oxtoby: Object to the question, the question was or is do you know him, is he a member of 397? There isn't any testimony that he saw him on that morning.

The Court: He asked him if he told him that. He would have to see him if he told him that. You may answer.

The Witness: No, I don't recall telling him.

By Mr. O'Neill: Q. Do you remember whether 1315 you talked to him that morning or not?

A. No.

Q. Did you tell anybody to send the men down to the hall that morning for a meeting?

A. No.

Q. You heard a witness testify for the Government in here the other day who said that you told them to go out and surround the equipment and pay no attention to the Deputy Sheriffs out there.

I will ask you if you recall making such a statement or giving such instruction to the men?

A. No, sir, I never said no such a thing.

Q. While you were having these telephone conversations and the conversation with the men from Masserman that wanted three men, what were the men doing around the headquarters there?

A. They were milling around there and talking. I was walking back and forth trying to take care of my job. I also sent men over to the Granite City Steel.

Q. What did you send them over to the Granite City Steel for?

A. There was an order there for men.

Q. All right. Now about what time, if you recall, 1316 was it that the men started to go out to the levee?

A. I couldn't tell you the time. It was in the morning, early, and I couldn't tell you the time.

Q. Had other men gathered there in addition to the 30 to 50 men that were there when you came back from the levee job?

A. Yes, eventually the whole parking lot was full.

Q. Did you talk to various of the men as they came in?

A. No. I remember going out through the parking lot, and I could tell by their conversation that they were—the way they were going, and I told them, "If you go out there, don't get into any trouble."

Q. At that time the Executive Committee had not gathered, had it?

A. I didn't have a chance to go get the Chairman, Mr. Courtway, who it is his duty to call the Executive Board together.

Q. Where was Mr. Courtway working that day, at that time?

A. He was working at the Granite City Steel Company, blast furnace No. 2, which is the originally Koppers Coke Plant.

Q. Was he working for Rust Construction Company, too?

A. No, he was working for Koppers.

1317. Q. I see, that was a different site than the place where was the plant that the Rust Company had?

A. Yes, sir, the office is approximately two miles further away.

Q. Now did the men begin to gather in their cars and go out to the levee site?

A. They begin to leave.

Q. Could you give us any estimate or any judgment as to how many men took off?

A. No, sir, I would only be guessing.

Q. Would you say there was a considerable number of them?

A. Yes, there was.

Q. In cars?

A. Yes, there was.

Q. What did you next do then, Jack?

A. I stood there outside, and when all of them had left, I thought that it was a possibility they would get in trouble and that I had better go back up there.

Q. Had you seen Dale Skeen?

A. I don't remember seeing him there particularly, no.

Q. Do you remember anybody specifically that you had seen that had come in from these jobs at other places, 1318 did you see Pete Paradoty?

A. I don't remember seeing Pete.

Q. Well, you were talking to all of them as they came in?

A. I remember talking to one man, Wally Simpson, who came in to pay dues, I believe, and he was working on a night shift.

Q. I see. All right. You got in your car then and took off for the place where these others had left for. How did you go?

A. I—I—They went out 67, that is the headquarters, and I took a short cut. I thought I would get up there before they did. I took a short cut over 20th Street to the Pipe Line Road and direct to the east levee, and right down the east levee.

Q. Along the top of it or the side of it?

A. Along the top if it.

Q. Is that a shorter route?

A. It is a shorter route and I didn't have any traffic.

Q. That is not a paved route, is it?

A. No, it is a work road on top of the levee, on top of the canal levee.

Q. Well, did you get there before your men got there?

A. No. There were quite a few of them there.

1319 They were—some of them were coming up as I pulled up.

Q. Well now, which way did you approach the scene, I mean, where the bridge crosses the canal from the south or from the north?

A. I approached from the south and heading north.

Q. Well, where did you stop or park your car, if you recall?

A. I stopped my car, the best as I can remember, about 200 feet from the ramp or entrance up on the levee right south of the bridge.

Q. Calling your attention again to Government Exhibits 4 and 4-A, I will ask you if that is a road looking in the direction—

A. That is it.

Q. (Continuing)—which you approached, that is the road shown on Government Exhibit 4?

A. I came from here (indicating), heading this way towards the bridge. This is the approach (indicating). I stopped right about here (indicating).

Q. Would that be right about where the ramp comes in or below the ramp?

A. It would be on this side of the ramp, I did not block the ramp.

1320 Q. Were there other cars there?

A. At that time I think I pulled around some cars and went up in the front.

Q. Do you know whose cars they were?

A. No, I couldn't say.

Q. Did you see the Sheriff's car there?

A. I don't remember seeing any of the Sheriff's cars.

Q. Do you remember about that time an incident in which a truck came along operated by Wilbur Holcomb of the Corps of Engineers that was carrying some equipment which the men stopped?

A. It would—wouldn't that be the one you were talking about pulling the manure spreader, or whatever it was?

Q. Yes.

A. I remember it, but not at that time.

Q. Did such an incident happen?

A. Yes.

Q. Was that before or after the interview with the Sheriff and Terry and so forth?

A. It was, I believe, after I had talked to the Sheriff.

Q. I see. Well, we will come to it in a minute then. What was the first thing you did when you got out
1321 of your car, Jack?

A. Jim Callahan met me. He walked over to me.

Q. Did you have a conversation with him?

A. Yes, I did.

Q. What did you say, and what did he say?

A. He said, "What is the trouble up here, Jack?" And I said, "Oh, nothing, just a little jurisdictional dispute." I said, "We can iron it out," words to that effect.

Q. Did you say to him this, or words to this effect: "Sheriff, I am glad you are here," or "Thank God you are here," or something to that effect?

A. I think I said, "I am glad you are here."

Q. Did you?

A. Yes.

Q. Well, by that time had your men begun to accumulate in considerable numbers, men from the union?

A. Yes, they had. They were coming up the side of the levee.

Q. So you said to the Sheriff, you thought it was something you could work out. What else was said, did he
1322 say anything more to you?

A. He talked about going over and talking to Terry.

Q. What did he say?

A. And he said, "I am going over and see if I can get Terry out of here," or words to that effect.

Q. Had you by that time been able to locate or see Terry's car or what was pointed out?

A. I could see it, yes.

Q. Had you ever met Terry before that morning?

A. No, I hadn't.

Q. Had you ever talked to him, with the exception of the telephone conversation which you testified to this morning?

A. No, sir.

Q. Well, can you remember as closely as possible what your actual conversation was with the Sheriff about getting Terry out of there, what he said and what you said?

A. The Sheriff, as I remember, walked back and forth from where I was standing over to where Terry was, and I stayed there at the same place.

Q. How far apart were your two groups, would you say?

A. I would say Terry was parked about just as far the other side of the ramp as I was this side, I would
1323 say approximately a couple of hundred feet.

Q. Well, in addition to Jimmy Callaghan, the Sheriff, did you see other people there whom you knew?

A. Oh, I saw Musso there and I saw Jack Fricker.

Q. Did you see either of Mr. Terry's bodyguards?

A. From there where I was standing, I don't remember seeing them there.

Q. By the time you got there, were you able to see then

the piece of equipment down along the River bank that Terry had been operating?

A. Yes, I could see a dozer down there.

Q. Was it moving when you got there?

A. No, it wasn't.

Q. Was there anybody around it?

A. There were men down there along it, but there was no operator on.

Q. You said this morning, and I think it was said that it was about nine o'clock when you first went out to the levee.

A. I said—yes, it was early in the morning.

Q. Could you estimate about the time it was that you got out there the second time?

A. No, I couldn't.

Q. Now after you had this conversation with Mr.
1324 Callaghan, he went up and talked to Terry, whom did you talk to next that you remember?

A. I remember Callaghan coming back and said, "Jack can he get out of here?"

Q. What did you say?

A. You want me to say the exact words?

Q. Yes.

A. I said, "I didn't invite the big son-of-a-bitch here, and I am not going to tell him when to leave. If you want him to leave, you tell him."

Q. All right. What did he do?

A. Then Jack Fricker came over from the vicinity of Terry's car and said, "Come on over and talk to Terry."

Q. So?

A. So I went over with Jack Fricker up to close to where Terry and there were other men standing there was.

Q. Who conveyed the message to Terry in response to the Sheriff's question as to whether or not it would be all right for him to leave?

Did Callaghan go back and tell him that, or did you tell him, or did Fricker tell him?

A. No, Callaghan must have went back and told
1325 him, I didn't tell him to leave.

Q. You went back up with Fricker?

A. I went back up with Fricker.

Q. Now there has been some testimony that you might have "cussed" him.

Did you use any language that probably wasn't exactly "Kosher" that morning there?

A. I told you what I said, when I was walking— kind of walking, when I was saying it, but I didn't say it direct to Mr. Terry. I said it to the Sheriff.

Q. Well, did you say this or this in effect, that "you could take your gun slingers and go back across the River."?

A. Whenever I went over, when Fricker asked me to come over and talk to Terry, then I went up and I started talking to Terry and I told him that, I says, "You can bring all of the goons and all of the guns you want over here, and you will get plenty of competition."

And he says, "Green, I believe you."

Mr. Oktoby: Where are you now, Mr. O'Neill?

Mr. O'Neill: I am kind of sorting around here between pages 26 and 28.

1326 By Mr. O'Neill: Q. What was the reason that you cussed him, Jack?

A. Well, I got a little angry because of the fact that he would bring those guards over with those guns and because I had seen occasions in Granite where people were seriously injured and one was killed, and I was worried about something that might happen over those firearms.

Q. Were you armed yourself?

A. No, sir.

Q. Do you know if any of your men carried arms?

A. No, I don't.

Q. Did you see any of your men with clubs or brickbats or rocks or any kind of weapon?

A. No, I didn't.

Q. Do you remember Mr. Terrys' testimony the other day that he said that after you had talked to him he held up his hand and said, "That is all right, that is O. K. with me," words to that effect, said "I believe you" and held up his hand just like that (indicating)?

A. No, I don't remember that.

I remember he said, "It looks like they are going to go. No hard feelings," when it looked like they were getting ready to go, he said, "No hard feelings, Jack," and I shook hands with him, and I said, "I got no hard feelings."

Q. After that, did he take off with his men, just tell what happened as nearly as you can remember.

A. There was a little scuffle there in before that.

Q. When was that scuffle, as you were coming up to Terry?

A. Yes, when I went up to Terry's.

Q. Tell the jury what kind of a scuffle it was.

A. Well, it seemed like as I walked up there, everybody crowded around, everybody crowded in, crowded into a small circle there, and I could hear some of the men saying back, "Watch Scotty," Scotty is my nickname—

Q. They call you "Scotty"?

A. Yes, I could hear some of them say, "Watch Scotty, because they got guns."

And Terry had his right hand either on his top coat or in his top coat.

Q. Would you tell the jury he had a gun, or do you know?

A. No, I wouldn't. I thought I seen a bulge, but I couldn't say whether it was a gun or not.

1328 And there was an arm come through the crowd and made a grab for that arm, or that pocket, and I took my hand like that and shoved the arm down (indicating).

Q. You don't know whose arm that was?

A. No, I don't.

Q. But it was one of the fellows in the crowd around the car?

A. Yes, it was.

Q. Well, the men then were all pretty closely around the car?

A. They were so close I had to take my elbows and hit them back to keep from being crowded in. They got us into a small circle.

Q. Did you see a small Government pickup truck that Mr. Lehmann had there?

A. No, sir, I did not.

Q. You wouldn't say it wasn't there?

A. Well, I am beginning to believe it was, but I didn't see it.

Q. All right. Well, did Terry then get into his car?

A. Terry's car was headed north, and Terry got in his car and I don't know whether one or two of the guards got in there with him there, I don't know
1329 whether one or two men got in there with him.

Q. Well, did you say anything, and what happened?

A. Yes, I did. When one got in there, the big fellow, both of them are big, but he bent over to get in, and I saw a holster in his back pocket, kind of—I don't know whether it was on his belt or in his back pocket, and I said, "You gun slingers better—"

Then I cussed him, do you want me to tell?

Q. No, you cussed him?

A. I said, "You had better get your 'can' out of here and keep it out of here."

Q. Did you say anything to the men around the car as they started?

A. I told the men, "Go on back to your jobs!"

Q. Well, with reference to letting the car get out of there?

A. Yes. Well, I took my hand like that (indicating), and I said, "Get on, get out of here." I was about half mad at them. I said, "Go on, get out of here!"

Q. Well, was that because they were blocking the progress of his car in order to make way for him to back up?

A. In order for them to make way, it is hard to back up on that levee, and he turned round and left.

Q. Going back to the incident that we were talk-
1330 ing about a minute ago, where this gentleman that was with the Corps of Engineers came along with this truck, with the grading equipment on it, or he said he had a tractor on the truck and he was pulling—pardon me—a manure spreader, I believe, did you see that man and that equipment?

A. Yes, I did. I saw him.

Q. From where did you see them come and what happened?

A. Well, Schaef, it all happened in a kind of muddle there, and I believe that he came along there at the time that Jim Callaghan walked over to talk to Terry, and I was standing there, and he was coming out, going north.

I faced—I was facing him, and I don't think the men intentionally stopped him. I think they just milled around and blocked the road, and if he was stopped, it was a very short period because I was walking towards him and I took my hand and said, "Get out of the road and let that equipment through!" and they got off the side, and he went on down the ramp.

Q. With reference to Mr. Terry, I will ask you whether or not you said to him that you were going to put him out of business in Illinois?

1331 A. No, sir.

Q. Or in Missouri?

A. No, sir.

Q. Do you know whether or not he has done any business in Illinois since this incident?

A. He moved back into our district down the coast of Chester and did a job about a month later, same type of job.

Q. Did he use a swamper on that job?

A. He did, you had him here.

Q. I don't know whether I asked you or not, Jack, but it wouldn't hurt to repeat it:

Did you ever tell Mr. Terry or Mr. Wright, either of them, at any time, that they had to have a laborer on each piece of equipment that they were operating?

A. No, sir.

Q. Is there any such rule in your organization, in your union?

A. Absolutely not.

Q. Is there any such provision in the exhibit that we talked about for several days here, the rules, I think it is Government Exhibit A, that little gray book, Government Exhibit A, is there—

1332 Mr. FitzGerald: Is that offered?

Mr. O'Neill: Yes, that is offered and portions of it have been admitted.

Mr. Alexander: Have been read.

Mr. O'Neill: Been read, yes.

By Mr. O'Neill: Q. Is there any provision in your contract—I mean with the Southern Illinois general contractors?

A. No, there isn't.

Q. I will ask you, Jack, whether or not on or about the 13th of April, 1953, at and adjacent to the Chain of Rocks Canal in Madison County, you, Jack Green, or the Laborers' Local 397, attempted to obstruct, delay or affect

commerce or the movement of interstate commerce by extortion, by demanding from Arthur W. Terry his money in the form of wages to be paid for imposed, unwanted, superfluous and fictitious services of laborers, commonly known as swampers?

A. No, sir.

Q. Did you attempt to do that?

A. No, sir.

Q. If Mr. Terry had hired a swamper, would any of his money in any way—

1333 Mr. Oxtoby: I don't think it should be even asked, a question that starts with "if," your Honor.

The Court: Read the question.

(Question read back.)

By Mr. O'Neill: Q. Would any of his money have ever come to you?

A. No, sir.

The Court: He can answer that.

The Witness: No, sir.

By Mr. O'Neill: Q. I will ask you if on or about the 26th of March, 1953, you, Jack Green, or the General Laborers' Local 397 of Granite City unlawfully and willfully obstructed and delayed or affected and attempted to obstruct commerce and particularly interstate commerce, the flow of it, by attempting to extort from Ralph Wright, Jr., who was then doing business under the name of Midway Excavating Company, his money and property in the form of wages, to be paid for imposed, unwanted, superfluous and fictitious services of laborers commonly known as swampers?

A. No, sir.

Q. I will ask you if on or about the 13th of April, 1953, as alleged in Count 3 of the indictment, you com-

1334 mitted and threatened physical violence to the person of Arthur Terry, Jr., for the purpose of obtaining money from him by extortion?

A. No.

Q. Or if on the 26th of March, 1953, you threatened and committed physical violence on the person and property of one Frank P. Luhning as an employee of Ralph Wright for the purpose of extorting money from him?

A. No.

Mr. Stoddart: Your Honor, we object. He has pled not guilty to these charges as contained in the indictment. I think one question would have been proper, but not each count in the indictment.

The Court: I think he can cover every count in the indictment.

Mr. Stoddart: He has pled not guilty.

The Court: It is true he is the defendant.

By Mr. O'Neill: Q. I will ask you if on or about the 13th of April, 1953, you attempted to obtain from Arthur W. Terry, Jr., his property, his money, with his consent by the wrongful use of force and violence and fear in furtherance of a plan to obstruct and affect commerce, to-wit, the interstate commerce of the movement of articles and commodities in such commerce, and to attempt that extortion by attempting to obtain from Ralph Wright, Jr., without his consent, his money?

1335

A. No.

Q. Whether or not, on the 13th of April, 1953, you, Jack Green, committed and threatened acts of violence to the property of Arthur W. Terry and to his person, this is just to his property, in furtherance of a plan of yourself and your union to obstruct and delay and affect commerce?

A. No.

Q. And whether or not on the 26th of March, 1953, you and the General Laborers' Local 397 threatened physical violence to the person of Frank Luhning and threatened physical violence to the property of Ralph Wright, Jr. in furtherance of a plan to obstruct and delay commerce?

A. No.

Q. Whether or not, on the 1st of January and for a long time prior thereto, I will ask you, and continuously thereafter from that date and up to and including the 1336 date of the return of this indictment against you, whether you conspired with the members of Local 397 and with diverse others—diverse other persons whose names to the Grand Jury were unknown, to do anything to affect or delay or interfere with interstate commerce?

A. No.

Mr. O'Neill: You can cross-examine, Mr. Alexander.

Cross-Examination by Mr. Alexander.

Q. Mr. Green, you have been the business agent for this local for 16 years, and a member for quite a number of years before that?

A. That is true.

Q. Have you ever occupied any other official portion with the union?

A. No.

Q. During this period of time, you were for a number of years a Police Commissioner at Granite City?

A. Yes, I was.

Q. And at one time Chairman of the Board?

A. That is right.

Q. And you have been undertaking the representation of this union for these years, throughout the jurisdic- 1337 tion of the union?

A. I don't understand your question.

Q. Well, you have been looking after the affairs of the union as business representative all through these years?

A. That is right.

Q. You have a wide acquaintanceship in the County of Madison?

A. I would say yes.

Q. A wide acquaintanceship with the public officials?

A. Part of them.

Q. And with law enforcement officers?

A. Some of them.

Q. And at times that has been a close relationship?

A. I don't know what you mean by a "close relationship."

Q. Well, at the time you occupied the position of Commissioner, you had a rather close association with the Police Department of your city at least?

A. As a member of the Board.

Q. As a member of the Board?

A. Yes, sir.

Q. So that you are well-known in the County, and likewise you know the populace in a general way in that County quite well?

1338 A. I wouldn't say in the County. I would say in the Tri-City area where I lived.

Q. What do you include in the Tri-Cities in addition to Granite City?

A. The Madison and Mitchell, Illinois, Venice, Illinois, the Tri-Cities, is Venice, Madison and Granite City, Illinois.

Q. Now, your union has a membership of somewhat over 170—of some 150 to 170 members?

A. That is right.

Q. While under your responsibilities as business agent, you look after the welfare from the labor union standpoint of some 1000 to 1500 laborers, that is correct, isn't it?

A. I look after the welfare of all the men that are working on the jobs within the jurisdiction of my local.

Q. And that is pursuant to your International Constitution?

A. That is right.

Q. These laborers can go from one local to another?

A. That is right.

Q. And a laborer from a local in another area, coming into your area and obtaining employment, pays dues 1339 to your local?

A. That is right.

Q. Now, the Constitution and By-Laws further require those men who come in to cooperate with the policies of the local union, do they not?

A. While they are working on the job, yes, sir.

Q. While they are working under your jurisdiction?

A. While they are working on the jobs, yes, sir.

Q. Their obligations to the union are the same as your members' in that respect, are they not?

A. As far as the contract is concerned, yes.

Q. And when they come into the union, into your jurisdiction from the outside, they report to your union headquarters?

A. Not all of the time.

Q. What exceptions are there?

A. There are exceptions that sometimes I will get in touch with a local business representative, and if I need, say, 25 or 30 men, and I know where that I need them, that I will just tell him to send them direct to the job.

Q. They go direct to the job?

A. That is right.

Q. And then later they contact your headquarters 1340 and pay their dues from time to time?

A. That is right.

Q. Your control of them is such that if your union calls a strike, they, under the rules, should observe the order?

A. If our union calls an official strike, yes. They are to observe it.

Q. They should respect that order?

A. They are to observe the rules and regulations, if there is an official strike called by the union.

Q. Now, in case they fail to obey such an order or policy of the union, has the union the power to discontinue their employment in the jurisdiction?

A. No, no, it hasn't.

Q. What?

A. There is provisions set up within the local union, the District Council of the International Union, that if a member violates any of the rules or regulations of the local union, that he is given a trial before a Trial Board.

Q. And he cannot lose his employment until there is such a trial?

A. That is right.

Q. Now, as business agent, you are closely asso-
1341 ciated with all matters of that kind, are you not?

A. Well, I don't know how to answer you that.

Q. Let me put it this way:

Under the direction of the officers and the Board and the members of the union, you are the one who actively carries out the negotiations when there is a dispute?

A. That is right, I am the business representative.

Q. And if there is a strike, you aid the membership and the officers in the conduct of it?

A. Say that again.

Q. When there is some kind of labor difficulty, your general duty is to represent the officers and the Board as their agent in conducting matters of that kind?

A. In a dispute, according to the agreement, is that what you are talking about?

Q. Yes.

A. Yes.

Q. Now, among other things, you appoint all of the shop stewards?

A. That is right.

Q. And down in your jurisdiction you also appoint the foremen of the different gangs of workers, do you
1342 not, or through the steward you do that?

A. Did you say through the stewards?

Q. Yes.

A. No, you are wrong.

Q. Well, how?

A. I appoint the general foreman in most cases with the approval of the employer.

Q. Yes.

A. And sometimes I appoint the foreman under them, and sometimes, he, the general foreman, and the employer selects them,

Most of the time from the group of workers.

Q. And they are from the workers who are represented by this union?

A. That is right.

Q. So that the general foreman and the foreman are out at the plant in a sort of a dual capacity, representing the employer and also representing the union and the men, are they not?

A. They don't represent the union, I represent the union, they represent the employer.

Q. But you approve their appointment?

A. I approve it.

Q. The person picked?

1343 A. Yes, I approve them.

Q. That gives you a position of power in the union, does it not?

A. I should think it would.

Q. I understand from your testimony, that on the 13th of April, 1953, you talked with Mr. Lauer, the superintendent at one of these job sites?

A. That is right.

Q. And at that time you stated that you thought there was a little dispute out there at the plant?

A. At Granite City Steel.

Q. At the Granite City Steel?

A. That is right.

Q. Had that dispute started at that time?

A. That dispute had been going on for a couple of months, or longer. There was two disputes over there, not one dispute.

Q. But you did have in mind on April 13th, that there was such a dispute?

A. At the Granite City Steel, yes.

Q. And you talked to Mr. Lauer?

A. I don't know whether it was Mr. Lauer or not, but someone called me from the Granite City Steel.

Q. Well, the gentleman, Mr. Lauer, who testified
1344 here, he substantially told the truth of that conversation, didn't he?

A. I think so. I think Mr. Lauer is a truthful man.

Q. Now, if you had it in mind that there was a dispute out there, why didn't you ask him about it?

Mr. FitzGerald: If the Court please, I don't think that is proper cross-examination.

Mr. Alexander: He has gone into it.

The Court: He may answer.

The Witness: Mr. Lauer told you that I didn't deal with Mr. Lauer, only on various occasions. I dealt with Mr. Hamilton, the field superintendent, on all of the disputes.

By Mr. Alexander: Q. Well, you did know at that time that this dispute, what was happening there that morning, you knew that it didn't involve the Rust Company?

A. I wasn't sure.

Q. You weren't sure?

A. I wasn't sure of what their dispute was over there.

Q. At that time you were not sure of what the men were congregating about or why they had left the plant?

A. No, we had two or three disputes over at the
1345 Granite City Steel at the time, and I didn't know

what the issue was, but I thought they walked out of there on account of one of them.

Q. But you told Mr. Lauer, didn't you, that there wasn't any trouble at his plant, that the men were coming down to the meeting hall?

A. No, I told Mr. Lauer that— I told Mr. Lauer that they would be back soon, that there wasn't any trouble.

Q. Still at the time you had it in mind that there was trouble out there?

A. There is always trouble in my job, it is just different places.

Q. All right. Isn't it a fact that these men are actually under your control in their employment?

A. Not under my control, no.

Q. What was this dispute up at the Granite City Steel?

Mr. FitzGerald: Certainly I don't think we ought to get into that.

Mr. Alexander: I think it is material.

The Court: Make it short. He can answer if he knows what it is about.

The Witness: I can tell them.

The Court: Tell what it was.

1346 The Witness: There was two disputes, one between the electricians and laborers over the wrecking and opening of trades on heavy equipment, and there was other disputes there between the pipe fitters and the laborers over the cutting and burning of scrap.

By Mr. Alexander: Q. Disputes such as you call "jurisdictional" disputes?

A. You are right.

Q. Between two different crafts?

A. Yes, sir.

Q. The one resulted, did it not, in the teamsters and chauffeurs union throwing up a picket line, didn't it?

A. If you want to go back—

Q. In May of 1953?

A. Are you talking about these two disputes you mentioned, there was other disputes over there?

Q. I am talking about that specific one, you remember the one I am talking to you about.

A. I don't remember the specific one, but there was a picket line of the chauffeurs over at that job, yes, sir.

1347 Q. And you directed the laborers to cross that picket line?

Mr. FitzGerald: If the Court please, I object.

The Court: Objection sustained. I don't see why we need to go into that.

Mr. Alexander: Your Honor, I will state what we want to show.

(A discussion was had out of the hearing of the jury and the reporter.)

The Court: Objection sustained.

By Mr. Alexander: Q. Now this dispute with Terry and Wright was a jurisdictional dispute, was it not?

A. Yes, sir.

Q. You have a contract that has been referred to as Government Exhibit A, you remember that contract?

A. Yes.

Q. That includes all of the construction contractors down in your jurisdiction, does it not, that is, who have their places of business in your jurisdiction?

A. No, that doesn't include only the contractors.

Q. It includes others in addition? Because it is a national organization?

A. That is right.

1348 Q. But locally, you had a contract with all the construction contractors that live in your territorial jurisdiction, don't you?

A. I will say that those that don't belong to the A. G. C.'s abide by the A. G. C. and the local contract.

Q. But you have practically all of them?

A. Yes, practically all of them.

Q. Practically all of them?

A. Yes.

Q. Now it is your provision in that contract, is it not, that the contractors agree that when they are using this heavy equipment that any work of a certain type or character in connection with the use of equipment shall be performed by laborers?

A. We have the jurisdiction on that covering heavy equipment.

Q. So that the effect of it is that if you have one, say, dozer operating—operated by one of those contractors on simple leveling jobs, the operator of the machine may not clean the tractor, hook up special equipment, that must be done by the laborer?

A. Yes, that is right.

Q. That is true even though there is work of that character of, say, only half to one hour a day, that is 1349 true, is it not?

A. I claim the jurisdiction.

Q. You claim the right to put that laborer on there, and if there is one machine, they must have a laborer?

A. No, that contract says where a laborer is involved.

Q. And you define labor work as consisting of cleaning the rollers and tracks?

A. Signaling, spotting.

Q. Signaling, spotting?

A. That is right.

Q. And all of those things?

A. That is right.

Q. But if there is a job requiring a dozer, where the laborer's work is done—is confined to possibly fifteen minutes to half an hour in a day, under that contract those contractors are required to have that laborer?

A. I have never found those conditions where there is only fifteen minutes involved.

Q. I am asking you that, doesn't the contract so provide there must always be a laborer on those jobs?

A. I think the contract speaks for itself. It says wherever labor work is involved.

1350 Q. Wherever it is involved?

A. That is right.

Q. Now if an operating engineer in your jurisdiction, employed by one of those contractors, should do the work of a laborer, as provided in your contract, that would be an unfair labor practice on his part?

A. No, that would be a jurisdictional dispute.

Q. It would be a jurisdictional dispute?

A. Yes, sir.

Q. But a contractor who is a member of that union or that agreement, a party to it, would not permit his operators to do that, would he, if he abides by his contract?

A. No, sir.

Q. So that as far as Mr. Wright and Mr. Terry were concerned, you contended that they should follow the terms of your agreement with the other operators, and it was your opinion that they should do that?

A. You say with the other operators or the other contractors?

Q. The other contractors.

A. That is right.

Q. But his operators were doing that, that work, that is what you considered to be a laborer's work, and

1351 therefore this was in the nature of a jurisdictional dispute?

A. That is right.

Q. You felt that the operating engineers should not do that type of work?

A. That is right.

Q. Even if there was only fifteen minutes to a half an hour of such work during the day?

A. That is right, they wouldn't let me climb on that rig, and I expect them to respect my work.

Q. And that is the basis of your contention that Mr. Wright and Mr. Terry should have employed a laborer?

A. That is right.

Q. Now you knew that this equipment was being operated when you went out there on the 23rd of March?

A. Yes, sir.

Q. And you did tell Mr. Luhning, was it, the operator—

A. Luhning.

Q. You say that you told him to have his boss call you?

A. That is right.

Q. And you deny that you told him that you wanted to see his boss at the site of the job the next day at noon?

1352 A. That is right.

Q. You did not say that?

A. No, sir.

Q. And you did not go to the job the next day?

A. No, sir, I never showed up on the job the next day.

Q. What, if anything, did you do between that day and the 26th with reference to this matter?

A. Mr. Wright called me that night.

Q. On the night of the 23rd?

A. After I talked to Luhning, he called me either that night or the next night, but he called me a short period afterwards.

Q. What did he say?

A. He said, "What is the trouble up here, Jack?" or words to that effect, and I says, "You need a laborer."

Q. Mr. Green, was that Mr. Wright, Jr. or Mr. Wright, Sr.?

A. It was Mr. Wright, Jr.

Q. Jr.?

A. That is right.

Q. Well, what did you say to him at that time?

A. I said he needed a laborer, and he said he didn't, and he said if I interfered with him that he would
1353 go and get the F. B. I. or the N. L. R. B.

Q. Then on the 24th and 25th, did you do anything else with reference to this matter?

A. Sometime in there, I got in touch with Mr. Taylor in St. Louis, Mr. Ollie Taylor, who was with the Labor Relations Department.

Q. That is your telephone conversation with Mr. Taylor?

A. No, I went over there.

Q. You went over there?

A. Yes, sir.

Q. Is there anything else you did between then and the 26th?

A. I don't—

Q. Let me ask you this:

Did you report the situation to any members of your Executive Board?

A. I don't remember.

Q. Or to any of the members of the union?

A. I make a report, a business representative report, at the meetings being at each meeting.

Q. Well, and that is at the regular monthly meeting?

A. Yes.

Q. Don't you make any intermediate reports or confer with your Executive Board?

1354 A. No, the Executive Board is only meeting on call.

Q. Only on call, were there any calls for Executive Board meetings between March 23rd and April 13th?

A. I would say no.

Q. So that unless an Executive Board meeting is called, you direct the conduct of the union in handling an affair of this kind for the union?

A. I wish you would repeat that again, Mr. Alexander.

Q. Unless you call an Executive Board meeting and get

the directions of the Board, you continue to handle a matter of this kind under your duty as a business representative and agent of the union?

A. Yes, in a lot of cases the Executive Board holds their meeting—their regular meetings, but our Board, we call our Board for any emergency that may arise.

Outside of that, I handle the business of the union.

Q. Now what was the next thing you heard about this?

A. About what?

Q. About this situation down on the levee where this equipment was being operated without laborers?

A. You mean on Junior's equipment, on Wright's equipment?

1355 Q. On his equipment, or Terry's equipment.

A. I heard that about two or three days later, a short time later, that some of the men had went up and talked to the operators, I think to Frank Luhning, the same operator that I had talked to, about two or three days later, and to Terry's operators, and asked them not to do our work.

Q. Now you had asked Luhning that same thing?

A. No, I didn't ask Luhning that.

I just told Luhning to have—

Q. You told him to have his boss get in touch with you?

A. Get in touch with me.

Q. And he did get in touch with you?

A. He did.

Q. Now when you found out, talking with Wright, did you understand he was going to continue his work?

A. No, I did not.

Q. Did you know about Terry working equipment up on the same levee at about this same time?

A. I don't believe I did, and Wright moved the piece of equipment that Luhning was running away from the site, and I don't know where he went.

Q. But you did learn that a group of laborers—did you know where they came from?

1356 A. Yes. I learned where they came from.

Q. How did you learn?

A. I learned that through some of the men out there talking, that they had went over off of the Masserman job and asked these operators to quit doing our work.

Q. Did you know who these men were?

A. I know a couple of them.

Q. Who?

A. One of them was Ernie Robinson.

Q. Was he a member of your union?

A. Yes, he was.

Q. Who else did you know?

A. I think Kenneth Donaldson.

Q. Was he a member of your union?

A. No, sir.

Q. Did you talk to Mr. Robinson about it?

A. No, I didn't.

Q. Now did you hear also that the Terry job had shut down?

A. I think Robinson talked to the operators on the Terry —I heard later—and Donaldson talked to the operators on the Wright equipment.

Q. When did you hear that with respect to the 26th

1357 of March?

A. It was around about ~~that~~ time, I couldn't tell you the exact date.

Q. Now, did you take any other action with respect to this matter when you learned that?

A. I tried to contact Mr. Terry and I was never successful in contacting him.

I tried through Terry Engineering.

Q. And you say you never received a message during the following days up to the 13th or the 12th—no, the 13th, from Mr. Terry, through your office?

A. No, none whatsoever.

Q. And none to your home?

A. None from Terry.

Q. You did have a talk with Ralph Wright, Sr.?

A. Ralph Wright, Sr. called me about the situation.

Q. He called you?

A. Yes, sir.

Q. He was the head of the operating engineers?

A. He was the business agent of the operating engineers.

Q. And that was of the operating engineers?

A. That is right.

Q. When was the first you heard that the operations had begun again?

1358 A. I think on April 13th when Terry called me.

Q. Was that before or after you went to the site of the job?

A. Well, I can't answer you that. I go on that job site on an average of once a week, I don't know what time you are talking about.

Q. Well, you went out on the job site the morning of the 13th, what time of the morning was it that he called you?

A. He called me around, I would say, around 8:00 o'clock.

Q. Now, had you been out on the bridge before that?

A. No, sir.

Q. He told you he was going to operate?

A. That is right.

Q. Did you then go out on the bridge, drive out on the bridge and you saw these cars down there and then you crossed the bridge, came back and went down in the neighborhood of those cars?

A. That isn't what I said.

Q. Let's hear it, that is the way I understood it.

A. I said I drove across the bridge and I looked down from the bridge, and I didn't see anyone, and I turned

around, and as I come back I saw a dozer coming north of the bridge, whether it was a dozer Terry had or not,
1359 I don't know, but I saw a dozer coming over toward the—coming south.

Q. Now then, what did you do?

A. I drove around. I drove around to the ramp and as I went up through the ramp, I met Mr. Fricker.

Q. Well now, how long did it take you to get on the ramp?

A. A very short time.

Q. Did you see that dozer come by?

A. I saw a dozer over north of the bridge, that is the only dozer I saw. I don't remember whether it was running or standing, setting there.

Q. I see. You didn't see any south of the bridge?

A. No.

Q. So you did not see the equipment that was on the job at all at that time?

A. I didn't go over. I stopped on this side of the levee, I couldn't see over the levee.

Q. If it was down on the slope of the levee, you wouldn't be able to see it, is that right?

A. On the west slope?

Q. Yes.

A. No, I would not be able to see it.

Q. Well, was it there when you had your talk with
1360 Fricker?

A. What do you say?

Q. Was it there you had your talk with Fricker?

A. It was right on that incline that I had the talk with Fricker.

Q. Was that the first time you saw Fricker that day?

A. Yes, sir, it was.

Q. What time was it?

A. I would say around 8:00 o'clock.

Q. Was that the first time you had the talk with Fricker that day?

A. Was it the first time I had any talk with Fricker that day?

Q. Yes.

A. Fricker called me on the phone.

Q. About what time?

A. It was in the morning, it was around that time, I couldn't say exactly what time.

Q. Well, you were at the office?

A. I was at the office about a quarter after seven.

Q. Well, did you have a talk with Fricker before you saw him out on the levee?

A. Yes.

Q. Was that talk held at the office?

1361 A. He called me on the phone, and I talked to him on the phone at the office.

Mr. Parker got the first call about a quarter after seven from Terry, and he laid a slip over on my desk.

Q. Well, I am talking about the talk with Fricker now.

A. Fricker called me on the phone.

Q. Well, were you there when the call came in?

A. Fricker didn't come in, Fricker called me.

Q. And you answered at once then, I take it?

A. I answered the phone, yes.

Q. Now, any time from then until you went out the second time on the levee, was there any Deputy Sheriff in your office?

A. Not that I recall, no, sir.

Q. Did you see a Deputy around there at all that morning?

A. No, I didn't, sir.

Q. You didn't talk to any Deputy Sheriff at your office that morning?

A. If I did, I didn't know he was a Deputy Sheriff.

Q. But you did know Fricker and had known him for some time?

A. Oh, yes, he comes into our office on a lot of oc-
1362 casions.

Q. Now when you talked to Terry, as a business representative of your organization, you decided to resist his effort to resume that contract, didn't you?

A. When I talked to Terry over the phone?

Q. Yes.

A. I don't think so.

Q. Did he ask you whether you intended to throw a picket line around it?

A. No, he didn't.

Q. He didn't say anything about it?

A. No, he didn't.

Q. You could have arranged for a picket for that job, couldn't you?

A. I could have, yes.

Q. You did tell him you intended to stop him, didn't you?

A. That is right.

Q. And one of the recognized ways is to picket the job, isn't it?

A. You say that is one way?

Q. Yes.

A. If they will respect it.

1363 Q. Well, suppose they don't respect it?

A. Oh, they keep on working, I guess.

Q. Why didn't you use the picket to inform these men there was a dispute there?

A. I didn't have to put up a picket.

Q. You didn't have to; I am asking you why you didn't.

A. Because I don't use pickets, I never picketed on one of those jobs.

Q. You don't use pickets?

A. No, sir.

Q. What do you use in such circumstances?

A. I am generally able to sit down and reason with the contractor and work it out in a reasonable way.

Q. What effort then did you make to arrange for any meeting with Mr. Terry to sit down and iron this out?

A. I couldn't get in touch with Mr. Terry.

If Mr. Terry would have done like other contractors when they come in the area, they come into my office, I would have been able to work something out with Mr. Terry.

Q. In other words, the contractors must come to you first?

A. They don't have to, but that is the practice.

1364 Q. That is, they find it worth their while to do it?

A. I think it creates harmony and they know how the jobs will go, yes, there has been some large construction jobs in that area and they have been a lot of them started in that office.

Q. And through the methods that you do use, you obtained these concessions from the contractors with respect to the use of labor on many pieces of equipment?

Mr. FitzGerald: I object to that.

By Mr. Alexander: Q. (Continuing)—pieces of equipment that require a very small amount of time to carry out, isn't that right?

Mr. FitzGerald: If the Court please, I think that question is very vicious and contains a lot of assumptions that are not in evidence and should not be in the case.

Mr. Alexander: They are in it unavoidably.

Mr. FitzGerald: They are not.

Mr. Alexander: I disagree with you.

The Court: What is the argument you gentlemen have? I didn't hear that.

Mr. O'Neill: Better read the question.

The Court: Read the question, if you will.

1365 (Question read back.)

The Court: Objection sustained. Confine it to this case, gentlemen.

By Mr. Alexander: Q. When you talked to Mr. Fricker, either over the phone or out on the job, he told you that Mr. Terry had some men with him who were armed?

A. Which do you want, there was two different conversations.

Q. I say, either one or the other, I will ask you which one, did he tell you that at one time?

A. Did he tell me what?

Q. That Mr. Terry had a couple of men with him who were armed as personal guards?

A. He told me that when I drove up to the ramp of the levee.

Q. That is when you left?

A. That is when I left.

Q. You did not ask Mr. Fricker to ask Mr. Terry to come down and join you?

A. I wasn't prepared to meet two or three with guns.

Q. Don't you think you might have asked Mr. Terry to come down alone?

A. Not if he brought bodyguards with him.

1366 Q. Not with the three bodyguards?

A. That is right.

Q. You were fearful of the three bodyguards or of the two bodyguards?

A. Well, they were pretty good-sized, and with guns, I imagine they would be bigger.

Q. There were two or three Deputy Sheriffs, weren't there?

A. The only ones I saw was Fricker.

Q. You saw the cars there and the men sitting in them?

A. I couldn't see in the cars.

Q. Did Fricker tell you how many men were on the job?

A. He told me Terry was there and had—

Q. I mean of his force, of the Sheriff's force.

A. No, he didn't.

Q. At any rate, you decided to leave?

A. That is right.

Q. And then you went back to the hall?

A. That is right.

Q. Did you take any steps then other than what occurred afterwards to arrange it so that you might have a conference with Mr. Terry?

A. Yes, I went back with the intention of getting my Executive Board together and going out there and
1367 seeing what the situation was with the Sheriff and Mr. Terry and the bodyguards.

Q. Now did you get in touch with any one of your Executive Board?

A. The one that I have to get in touch with, under the provisions of the rules, is the Chairman. I don't call the Executive Board together, the Chairman of the Local calls the Executive Board together.

Q. Well, you could call a member of the Executive Board and discuss it with him, couldn't you, report it?

Mr. FitzGerald: I think, if the Court please—

The Court: He can answer whether he could or not.

By Mr. Alexander: Q. You could do that, couldn't you?

A. I don't discuss it with the members of the Board. I discuss it with the Chairman. If the Chairman feels he should call the Board, then he calls the Board, that is his duty.

Mr. Alexander: Your Honor, I am about through with him. There are a couple of little matters I would want to look at and see if I have a couple of more questions. If we can have our recess now, I would appreciate it.

1368 The Court: We will take a ten-minute recess. You may retire.

(Whereupon a short recess was had.)

The Court: You may cross-examine.

Cross-Examination by Mr. Alexander (Continued).

Q. Mr. Green, your Constitution and By-Laws of your Local does provide that for locals of more then 100 members, 15 members constitutes a quorum, that is correct, isn't it?

A. That is right.

Q. 15 is a quorum for a meeting?

A. That is right.

Q. Who was the president of the union at that time?

Mr. FitzGerald: What time?

By Mr. Alexander: Q. On the 13th of April.

A. Emmet Courtway.

Q. Did you see him that morning?

A. No, I didn't, sir.

Q. Who was the vice-president?

A. Dale Skeen.

Q. That is the Dale Skeen who was steward out at the Dow plant?

1369 A. That is the same one.

Q. He was there that morning, wasn't he?

A. I believe he was.

Q. He was there when you came back from talking with Mr. Fricker, wasn't he?

A. I believe he was.

Q. In the absence of the president, didn't you feel you should discuss this matter with the vice-president who was there?

A. If it was in a regular meeting, yes.

Q. You didn't feel any responsibility to talk to him about it at all?

Mr. O'Neill: Objection.

The Witness: I wouldn't have any authority to.

By Mr. Alexander: Q. Who was the corresponding secretary?

A. Elmer Graft.

Q. Did you see him that morning?

A. No, I didn't.

Q. Where was he employed?

A. I am not sure whether it was Dow or Granite City Steel, but I believ it was one of the two.

Q. In your general duties as an agent of the
1370 organization, didn't you generally follow the orders of the officers and Executive Board?

A. Do I generally follow the orders of the union?

Q. And in between meetings of the union, who ran the affairs of the union?

A. I do.

Q. Now while you say you didn't have the power to call an Executive meeting, or a meeting of the membership or the other officers, didn't you feel that it might be wise to consult with the officers whom you could reach?

A. No.

Mr. O'Neill: What time?

Mr. Alexander: On the 13th of April.

Mr. O'Neill: When he came back?

Mr. Alexander: Yes.

Mr. Stoddart: I didn't get the answer.

(Whereupon answer was read back.)

By Mr. Alexander: Q. The officers of this organization were unsalaried generally, weren't they, except the financial secretary?

A. It is just the opposite. The financial secretary is the only one who is on a salary.

Q. He is the only one that is on a salary?

1371 A. That is right.

Q. And you are on a salary?

A. I am on a straight salary, yes, sir.

Q. And you devote all of your time to the union affairs?

A. Yes, sir.

Q. You did report this situation out on the levee at the meeting on April 9th?

A. That is right.

Q. Looking at Government Exhibit No. 7, will you tell me, are you able to tell me, Mr. Green, anything in there that would prevent you from asking the members of the Executive Board to meet?

Mr. FitzGerald: Well, I think the Constitution speaks for itself.

The Court: Prevent him from asking them to meet?

Mr. Alexander: If there is anything in that Constitution that would have prevented him from asking the Executive Board to meet.

The Court: When, you mean on this morning?

Mr. Alexander: On April 13th.

The Court: Answer it, if you will, is there anything?

1372 The Witness: That would—

The Court: Prevent you from calling on the president to ask him to meet?

The Witness: That is what my intentions was.

The Court: There is nothing in there to prevent it?

The Witness: It is set up in there for the Chairman to call the Executive Board; not me.

Mr. Alexander: I have been unable to find it.

The Witness: It is in there.

By Mr. Alexander: Q. If it is in here, as you say, aren't you able to find it?

A. I am not able to memorize it, sir.

Q. Well,—

Mr. FitzGerald: I think it is shown in Section 9 on page 8.

Mr. Alexander: Section 9, on page 8?

Mr. FitzGerald: Down at the bottom of the page, you will find it.

Mr. Alexander: I will be glad to read it to the jury.

Mr. FitzGerald: Marks, you know I have never
1373 tried to tell you what to do.

Mr. Alexander: I will offer to read Section 9.

The Court: Go ahead and read it.

Mr. Alexander: (Reading.) "The Executive Board of this local shall consist of the president, vice-president, recording and corresponding secretary, the financial secretary, the treasurer and two other members, not officers, elected at the usual election, and in the same manner as the officers of the local.

"In the event that the office of financial secretary and the office of treasurer have been combined into one office of secretary-treasurer, then there shall be elected three other members to the Executive Board who are not officers. A majority of members shall constitute a quorum. It shall have power to take any action that the local union can take, and which because of emergency cannot be delayed until the next regular meeting.

1374 "It should have at least one meeting before each regular meeting of the local to consider and recommend such action which in its judgment will be beneficial to the local."

By Mr. Alexander: Q. Now there wasn't anything in that Section that would have prevented you as a member and business agent—

Mr. O'Neill: Marks, I think we can shorten this. Section 2 says the president—read that section, too.

The Witness: The president's duties, it is under.

Mr. Alexander: I am perfectly willing to read Section 2, whatever is material on this.

(Reading.) "Except as otherwise provided in this or

the International or uniform District Council constitutions, the local union shall be autonomous in the exercise—"

Mr. O'Neill: That is not it.

Article 2, Section 2.

The Court: Well, you read it then if it covers it.

1375 Let's get along in this case.

Mr. Alexander: Section 2, that is the way mine read. You have got the wrong one.

The Court: You boys ought to get your books straightened out.

The Witness: They are different portions of the books.

Mr. Alexander: You have the wrong article, Section 2 of Article 5.

Mr. O'Neill: That is right.

By Mr. Alexander: (Reading.)

"It shall be the duty of the president of this local to preside at all its meetings, to maintain order, appoint committees not otherwise provided for by the Constitution, sign all orders for payments of moneys, and sign all official documents.

"He shall call special meetings whenever requested so to do by the Executive Board of this local."

By Mr. Alexander: Q. Now, do you recognize that as a provision of the Constitution?

A. That is in there, yes.

1376 Q. Now it is also provided here, is it not, that the vice-president shall carry out the duties of the president when the latter is absent?

A. When he is absent from a meeting, yes.

Q. Now on that day did the president attend—the president wasn't there at the hall, was he?

Mr. FitzGerald: If the Court please, Mr. Alexander's statement of what the power of the vice-president may be is not in accordance with this Constitution.

Mr. Alexander: All right, I will read that.

Mr. FitzGerald: I will read that.

All right, read that, please.

Mr. Alexander: If counsel wants it, all right.

Section 3 of Article 5—

Mr. FitzGerald: That is right.

Mr. Alexander: (Reading.)

"The vice-president shall in the absence of the president at any regular or special meeting perform the duties of the president for said meeting."

Mr. FitzGerald: That is not what you are talking about.

Mr. Alexander: Yes, it is.

1377 The Court: Let's go ahead. What is the question before us?

By Mr. Alexander: Q. Now the vice-president was there and the president was not—

Mr. FitzGerald: There was no meeting.

The Witness: There was no meeting.

By Mr. Alexander: Q. I recognize that, he was there, wasn't he?

A. Whether he was there at that time or not, I don't know.

Q. He was there when you got back from talking with Fricker, wasn't he?

A. He was mingling around in two or three hundred people.

He was possibly there, I don't know whether he was there at that time when I got back or not.

Q. He was there available to you, wasn't he?

A. What do you say?

Q. He was there available for you to talk to him?

A. I don't know whether he was or not.

Q. You didn't make any effort to talk to him about this situation?

A. No, sir.

Mr. Alexander: I think that is all.

1378 The Court: Any further questions of this witness?

Mr. O'Neill: Just one or two, your Honor.

Redirect Examination by Mr. O'Neill.

Q. Mr. Green, in response to one of Mr. Alexander's questions as to whether or not a man, an employer, would be required to use a laborer even though he only had fifteen minutes' or an hour's work to do, you answered, I believe, that the contractor was required to use a laborer for laborer's work, isn't that right?

A. Yes.

Q. Is there anything under the agreement with the Associated General Contractors of America which prohibits the contractor from sending a laborer home when there is not any work to do, when he has done his work?

A. Absolutely not, all he has to do is pay.

Q. And then he pays him for what?

A. Pays him for a minimum of four hours.

Q. That is right. Now you said that in response to one of Mr. Alexander's questions that you could 1379 have called a picket line.

I will ask you again, could you have called a picket line out on the job that morning, Jack Green, business agent?

A. I would have to go through the procedure of going to the Executive Board and to the organization, and it would have to be approved by the membership before.

Q. Before you could put a picket line on there?

A. Yes.

Q. In response to one of the questions put by Mr. Alexander, I understood you to say—I may not have heard you correctly—that you said when you came back that morning you didn't feel it was wise to consult with the officers.

Did I understand you correctly?

A. I never said that, I didn't intend to say that. I don't remember him asking me that question.

Q. All right, that was just a misunderstanding on my part then. That is all.

The Court: Anything further?

Mr. Alexander: That is all.

The Court: You may be excused.

Call the next.

(Witness excused.)

1380 Mr. FitzGerald: We rest, your Honor.

The Court: Is there anything in rebuttal?

Mr. Alexander: We could have, your Honor, but there are very few, I will say, it won't take very much time, but I can scarcely put it on until I have gone back into the office and talked to them.

I have not had time to talk to the men.

The Court: How long will it take?

Mr. Alexander: Well, I would say it would take me ten or fifteen minutes to line it up.

The Court: Not you, but the witnesses, how many are there?

Mr. Alexander: I don't think it would take more than half an hour.

The Court: All right, there may be one back there you could call. I am as anxious as they are to get out.

Ladies and gentlemen of the jury, remember the admonition of the Court.

We are getting along toward the close of this trial and there will be some more testimony; and there will be
1381 argument of counsel, and instructions of the Court, and I want you, if you can, to try and prevent yourselves from forming an opinion or from discussing the case with anybody until you have finished. That is the American way of a jury, and I appreciate knowing that you will do that.

You will be excused until tomorrow morning at 10:00 o'clock.

Come back at that time.

(Whereupon the jury retired.)

The Court: Court will be adjourned until tomorrow morning at 10:00 o'clock.

(Whereupon these proceedings in the above-entitled case were adjourned until the following day, Friday, September 24, 1954, at 10:00 o'clock a.m.)

1382 Court reconvened in the above-entitle cause at the hour of 10:00 o'clock a.m., September , 1954, pursuant to adjournment.

Present:

Same as before, to-wit:

Mr. Alexander, Mr. Oxtoby, and Mr. Stoddart, appearing on behalf of the Government;

Mr. O'Neill and Mr. FitzGerald, appearing on behalf of defendants.

1383 The Court: Call the witness.

Mr. FitzGerald: If the Court please, I don't know whether we have offered all of the identified exhibits; and so as to obviate the possibility that we have not, I would like now to offer all of the identified exhibits.

The Court: Is there any objection to any of them?

I don't remember what exhibits there were. I don't know.

Mr. Alexander: I think not, your Honor.

The Court: All right. All of the exhibits offered by the defendants are now reoffered and are admitted by consent. (Whereupon said exhibits were received into evidence.)

Mr. FitzGerald: Your Honor says all exhibits offered. I think perhaps some of them may not have been offered. Should it not be all exhibits identified?

The Court: You had better go over them afterwards.

Mr. Alexander: I can't remember. I am think-
1384 ing of certain specific ones. You read from the constitution—

The Court: We can take care of that very easily after this is all over. You can examine your exhibits, and we can go ahead and take care of it.

Call the witness.

1385 JOHN P. GRANFIELD, called as a witness on behalf of the Government in rebuttal, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Alexander.

Q. Will you state your full name?

A. John P. Granfield.

Q. Where do you live, Mr. Granfield?

A. Edwardsville, Illinois.

Q. What is your occupation?

A. Special Agent, Federal Bureau of Investigation.

Q. How long have you been a Special Agent?

A. Approximately seven years.

Q. How long have you been stationed at Edwardsville?

A. It will be five years in February, 1955.

Q. As such, did you interview certain individuals with reference to the matters that have been presented to the court in this case?

A. I did.

Q. Do you know Mr. Jack Fricker?

A. Yes, sir.

Q. When did you first meet him, approximately?

1386 A. Yes, sir.

Q. When did you first meet him, approximately?

A. Shortly after he was appointed deputy sheriff in the latter part of 1950.

Q. Did you interview him in connection with this case?

A. Yes, sir.

Q. Can you tell us when?

A. It was on May 14, 1953.

Q. Where did you find him?

A. In the sheriff's office at Edwardsville, Illinois.

Q. Was there anyone else present at that time?

A. At the time I interviewed Mr. Fricker there was no one else present.

However, there were other individuals in the sheriff's office.

Q. Do you know who they were?

A. Yes, sir.

Q. Who—there was Deputy Sheriff Musso, and Sheriff Callahan.

Q. Was that a separate room from the one in which you talked with Mr. Fricker?

A. Yes, sir.

Q. I will ask you if at that time you asked Mr. Fricker whether or not there was a written report of the 1387 incident out on the Chain of Rocks canal in the files of the sheriff's office?

A. I did.

Q. I will ask you whether or not you then asked him to obtain that report for you?

A. Yes, sir.

Q. Did you see where he went then?

A. Yes, sir.

Q. Where?

A. He went into the vault in the sheriff's office, in the public part of the sheriff's office.

Q. Did you see what he did in there?

A. I didn't note particularly, no, sir.

Q. How long was he in there, approximately?

A. Oh, approximately two or three minutes. I can't recall specifically.

Q. I will ask you if he then came out and told you in substance that he could not find a report of the incident?

A. Yes, sir.

Mr. FitzGerald: I don't see, if the Court please, how this is rebuttal of anything. Mr. Fricker testified to the same thing.

1388 Mr. Alexander: I beg your pardon. It is not my memory of the testimony.

The Court: Go ahead.

By Mr. Alexander: Q. I will ask you if Mr. Fricker, during this interview, stated to you in substance the following:

That he arrived at the Chain of Rocks project at about eight o'clock a.m. on that Monday morning, but saw no one there; that he then went back to Granite City, Illinois, and called the sheriff's office to find out what the trouble was; that he was told that Terry was the one who had said there might be some trouble; that he then went to Jack Green's office to find out where Terry was; that while he was at Green's office Green received a telephone call, and from the conversation Fricker assumed it was Terry who called; and Fricker gathered the impression that Terry was going to operate equipment without laborers?

A. Yes, sir.

Q. I will ask you whether or not he told you this, or this in substance:

That about a half an hour after he got back to the Chain of Rocks canal, Jack Green drove up alone; that he 1389 told Green he did not want any trouble and Green replied there would not be any trouble; that Green then left, saying he was going to set up a picket line.

Did he say that, or that in substance?

A. Yes, sir.

Q. I will ask you whether or not Fricker further in that interview said this, or this in substance to you:

That about 10:30 or 11:00 a.m. Green returned with about fifty individuals; and that from 150 to 250 indi-

viduals came later on; that a picket line was then thrown around the piece of equipment which was operating, and that the operator of the equipment then got down.

Did he say that, or that in substance?

A. Yes, sir.

Q. In the course of your work on this case, did you interview one Peter Peradoti?

A. Yes, sir.

Q. Can you state when you interviewed Mr. Peradoti?

A. On the evening of October 12th, 1953.

Q. Where was that interview?

A. At Peradoti's home in Collinsville, Illinois.

1390 Q. Was there anyone with you?

A. Yes, sir.

Q. Who?

A. Special Agent Charles J. Sheppard.

Q. Was there anyone else present besides Mr. Peradoti?

A. There was a woman in the house. Now I don't recall exactly whether she was present during the interview or not.

Q. I will ask you whether or not in that interview Mr. Peradoti told you in substance, among other things:

That he parked his car in the parking lot at the union hall and went into the union hall; that he did not recall whether Joe or Vic entered the hall and said there were—and added there were a lot of people in the hall; that he recalled seeing Charlie Parker, Jack Green, and his nephew Rolla Durham in the hall; that from the general conversation in the hall he learned there was a scab job going to be run in the Chain of Rocks canal project, and that the members of the local present were going to go out to the canal project to see that the contractor did not have any scab labor there; and furthermore to see that the con-

1391 tractor did not work a job without union labor.

Did he say that, or that in substance to you?

A. Yes, sir.

Mr. Alexander: I think that is all of the witness.

The Court: Cross-examine.

Cross-Examination by Mr. FitzGerald.

Q. Mr. Granfield, do you know from what Mr. Alexander was reading his questions to you?

A. Yes, sir.

Q. Was it from a memorandum prepared by you?

A. Yes, sir, a report.

Q. Will you let Mr. Granfield have the report, Mr. Alexander, please?

(Document handed to the witness.)

Will you find in that—I know there is quite a few papers together—are those reports prepared by you, by others than Fricker and Peradoti?

A. Yes, sir.

Q. Now will you please turn to the Fricker report?

A. I have it here, sir.

1392 Q. How many pages of that did you write?

A. The interview—

Q. Just answer my question, please.

A. Would you repeat it?

Q. How many pages did you write in your report of Fricker?

A. I didn't actually write any, I dictated from notes.

Q. All right. How many pages are there of your dictation?

A. Approximately a page and a half.

Q. Now how long were you with Fricker?

A. I would say about forty or fifty minutes.

Q. Do you recall when you dictated that?

A. It was within two weeks following my interviewing him.

Q. During that time you were interviewing many people, weren't you, in regard to this matter?

A. Yes, sir.

Q. How long a time did you spend interviewing people about this case?

Mr. Alexander: Objected to as immaterial.

Mr. FitzGerald: I think I have a right to find out.

The Court: Objection overruled. I think it is a
1393 question of memory.

The Witness: It depended on the person with whom I was talking.

By Mr. FitzGerald: Q. No. I am talking of the period of time covered by you in your work in connection with this case.

A. The specific case that I worked on, this case?

Q. Yes, sir. When did you first begin?

A. During the latter part of April, 1953.

Q. When did you finish, or have you finished?

Mr. Alexander: Objected to as calling for a conclusion.

Mr. FitzGerald: I am asking him if he knows.

The Court: You mean as to finishing interviewing witnesses? Is that your question?

Mr. FitzGerald: Yes.

The Witness: I interviewed people as late as—in connection with this case—as late as September, 1954.

By Mr. FitzGerald: Q. Have you worked upon other cases in the interim?

A. Yes.

Q. What portion of time from when you started early in April of 1953 and when you quit interviewing per-
1394 sons in September of this year have you spent upon this matter?

A. I don't know, sir.

Q. You say you made notes at the time of the interview with Fricker?

A. Yes, sir.

Q. Do you have those notes?

A. No, sir.

Q. What did you do with them?

A. After dictating to a stenographer in Springfield, Illinois, I destroyed the notes.

Q. Did you show the notes to Mr. Fricker?

A. No, sir.

Q. Did he have any opportunity to read over this report and see if there were inaccuracies or incorrect statements in it, have any opportunity to check them and discuss with you whether or not they were accurate?

A. No, sir.

Q. Then you talked to Mr. Fricker for how long?

A. Approximately forty minutes, I would say.

Q. And you do not have any copy of the notes that you made at that time?

1395 A. No, sir.

Q. Mr. Granfield, you have testified in cases before, have you not?

A. Yes, sir.

Q. And would not your notes furnish the best supporting evidence of this report that you dictated that it would be possible for you to have?

A. In certain cases, yes.

Q. Was there anything in the notes that you did not include in this particular dictation?

A. No, sir.

Q. Your notes would disclose that if you had them with you, would they not?

A. Yes, sir.

Q. Did you ask Mr. Fricker to initial them or sign them or in any way indicate his approval of the notes that you made?

A. No, sir.

Q. When you dictated the report which you have, and which Mr. Alexander made, you had not written down the matter that he read to you this morning, had you?

A. Would you repeat that again, please?

Q. When you made your notes, did you write down
1396 upon those notes the matter that Mr. Alexander read from our dictated report in the same way that you have that same language in there?

A. No, sir.

Q. Mr. Granfield, you saw Mr. Peradoti in October of 1953, some five months after you saw Mr. Fricker, is that right?

A. Yes, sir—four months would be closer.

Q. Sir?

A. I say, four months would be closer.

Q. Well, you saw Fricker in May, that is the fifth month.

A. That is right. You are right. I am sorry.

Q. Sir?

A. I say, I am sorry. You are correct.

Q. Oh, don't be sorry, because all of us make mistakes, especially when we try to add, subtract and find out things. I never could do it.

Mr. Granfield, how many persons in connection with this case had you interviewed between the time that you saw Mr. Fricker and Mr. Peradoti?

A. I don't know, sir.

Q. It would be as many as fifty, would it not?

A. I don't know.

1397 Q. But can you give the jury some idea, some estimate of it?

A. Frankly, I don't know.

I interviewed a considerable number of people, not only in connection with this case but with other investigative matters.

Q. I am talking about this case, and you understand that?

A. I don't know, sir.

Q. What?

A. I say, I don't know.

Q. Don't you have some judgment about the number?

A. It could be fifteen, twenty-five, thirty-five, I don't know.

Q. Might it be as many as seventy-five?

A. No, sir.

Q. Fifty?

A. I don't know.

Q. All right. You and Mr. Sheppard went to see Mr. Peradoti? On the 12th day of October, 1953, that is right, is it not?

A. Yes, sir.

Q. You did not have Mr. Sheppard with you when you interviewed Mr. Fricker?

1398 A. No, sir.

Q. You did have him when you saw Mr. Peradoti?

A. Yes, sir.

Q. He is also an FBI man, isn't he?

A. Mr. Sheppard is a Special Agent, yes, sir.

Q. Had he been also investigating this matter?

A. No, the case was assigned to me.

Q. And you took him with you over to see Peradoti?

A. Yes, sir.

Q. Now when you saw Peradoti did you write out the substance of your interview with him?

A. Yes, sir.

Q. That is, while Mr. Sheppard was there?

A. Yes, sir.

Q. Is Mr. Sheppard here at the court now?

A. No, sir.

Q. When you wrote it out, did you show it to Mr. Peradoti?

A. No, sir.

Q. Is it not true that at the time you did interview Mr. Peradoti you wrote out in longhand what you believed to be a correct statement of the substance of your talk with him and what he told you, and asked him to sign it?

1399 A. No, sir.

May I amplify that remark?

Q. Sir?

A. May I amplify that remark?

Q. May you what?

A. Amplify it.

Q. Why, sure, say anything you want about it.

A. During the course of the interview with Mr. Peradoti I made notes; and following that, I asked Mr. Peradoti whether or not he wanted to give me a signed statement based on the facts which he had given me.

He declined to furnish a signed statement.

Q. You did not ask him to sign or initial the notes you gave him?

A. No, sir.

Q. When was it that you asked him about giving you a signed statement?

A. On the same evening.

Q. You hadn't prepared it?

A. No, sir.

Q. You never presented anything to him for his signature?

A. No, sir.

1400 Q. So that he could read it over and find out whether it did accurately report what he had said?

A. That opportunity would have been given—

Q. Just answer my question. You never wrote anything out and offered it to him so he could read it and see whether it did accurately represent what he had said?

A. No, sir.

Q. Did you ever offer anything of that kind to Mr. Fricker?

A. No, sir.

Q. Would it not be fair, Mr. Granfield, to do that in each instance?

A. I offered to—

Q. Now answer my question.

A. No, sir.

Q. You don't believe that it is fair to afford the person about whom you say made statements to see and have an opportunity to examine what you have reported as their statements?

A. As I pointed out previously—

Q. Will you answer my question?

A. That is a hard question to answer, sir. I offered Mr. Peradoti an opportunity—

1401 Q. No. Answer my question. You don't think it is fair to do that?

Mr. Alexander: We object to the conclusion.

The Court: Objection sustained. I think that is a question for a jury and not a question of what he thinks.

Mr. FitzGerald: That is all.

Redirect Examination by Mr. Alexander.

Q. Now will you explain, Mr. Granfield, why you did not write out the statement that you obtained from Mr. Peradoti?

A. After interviewing Mr. Peradoti, I asked him whether or not he wanted to incorporate all of the information which he had furnished us in a form of a signed statement, and he declined to furnish that signed statement.

Q. Now with reference to Mr. Fricker, will you explain why there was a reason you did not follow the same course of conduct with him?

A. It is not—excuse me, have you finished?

Q. Yes, I have finished.

A. It is not the usual procedure, or it is not the
1402 procedure to ask a police officer to give a signed statement when he is expected to be a government witness. That is all.

Mr. Alexander: That is all.

Recross Examination by Mr. FitzGerald.

Q. Mr. Granfield, did you offer or ask each of the persons whom you interviewed about this case whether or not they desired to give you a signed statement?

A. I asked Mr. Peradoti.

Q. No. Answer my question.

A. Yes and no.

Q. What do you mean by yes and no?

A. I asked Mr. Peradoti whether he wanted to give a signed statement.

Q. You have told us that. My question was: Did you ask each of the persons whom your interviewed about this case, except Mr. Fricker?

A. No, sir.

Mr. FitzGerald: That is all.

The Court: Is that all, gentlemen?

1403 Mr. Alexander: Just a minute, your Honor.

Q. Did you ask any of the officers from whom you obtained statements with reference to this matter to give you signed statements?

A. No, sir.

Q. And among those were the sheriff?

A. Yes, sir.

Q. He was one of them, Mr. Kellermann?

A. Yes, sir.

Q. Mr. Turner?

A. Yes, sir.

Q. And Mr. Musso?

A. Yes, sir.

Mr. Alexander: I think that is all.

Recross Examination by Mr. FitzGerald.

Q. Well, that made four more officers, and you are not able to tell us how many who were not officers you interviewed?

A. I can't say.

Q. Did you ask all of those who were not officers to sign any statement of what they had told you, all of them?

1404 A. Not all of them, sir.

Mr. FitzGerald: That is all.

Redirect Examination by Mr. Alexander.

Q. Will you explain why you did not ask some of them?

Mr. FitzGerald: I object to that.

The Witness: Because they did not furnish positive information.

By Mr. Alexander: Q. With reference to certain individuals interviewed, did they refuse to tell you anything?

A. Yes, sir.

Mr. Alexander: I think that is all.

Recross Examination by Mr. FitzGerald.

Q. By "positive information", do you mean information that you thought would assist the prosecution of the case?

A. Yes, sir.

Q. Any information that was contrary to your ideas of what was "positive information", you didn't want, isn't that right?

1405 A. No, sir. Any information that had a bearing on this case.

Mr. FitzGerald: That is all.

The Court: You may be excused.

(Witness excused.)

1406 ARTHUR W. TERRY, called as a witness on behalf of the Government in rebuttal, having been heretofore first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Alexander.

Q. Will you state your name?

A. Arthur W. Terry.

Q. You are the same Mr. Terry who testified before in this case?

A. Yes, sir.

Q. Mr. Terry, referring to the 26th of March 1953, what equipment did you have on your job site on the Chain of Rocks canal?

Mr. FitzGerald: If the Court please, there is no rebuttal here—

The Court: I thought he testified to that.

Mr. FitzGerald: Yes, he did.

Mr. Alexander: No, your Honor, he did not tell what. I will state what this is in reference to.

The Court: I think I know what it is in reference to.

1407 Mr. Alexander: Counsel had certain pictures in their case. If the court will remember, we objected on the ground that there was no showing it was the same equipment, now, or similar equipment.

Now we want to show by this witness what that equipment was, and then we have another witness.

The Court: That is all right. Go ahead, if that is the purpose of it.

Mr. FitzGerald: Why don't you show him the pictures?

Mr. Alexander: I will ask you this:

Q. What equipment did you have on the 26th of March on the job site?

A. I had a T-18 bulldozer.
Q. What make was that?
A. That is an International.
Q. What other equipment on the 26th of March?
A. I had a HD-10, bar tractor, pulling a scraper.
Q. Now what make was that tractor?
A. That was an Allis-Chalmers.
Q. On the 13th of April, what equipment did you
1408 have on the job site?
A. The same Allis-Chalmers, pulling the scraper.
Mr. Alexander: I think that is all.
Mr. FitzGerald: No questions.
The Court: You are excused. Call the next.
(Witness excused.)

1409 THORNTON C. CHRISTNER, called as a witness on behalf of the Government in rebuttal, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Alexander.

Q. State your full name, sir.
A. Thornton C. Christner.
Q. Mr. Christner, where do you live?
A. About three miles out on North 12th.
Q. In this city?
A. Quincy.
Q. Quincy?
A. In the suburbs.
Q. How long have you been a resident of Quincy and its neighborhood?
A. Forty-four years.
Q. What is your business?
A. I am a contractor.

Q. How long have you been in the contracting business?

A. Thirty—twenty-eight, thirty years.

Q. Do you specialize in any particular kind of contracting work?

1410 A. Oh, yes, levees and ditches.

Q. Grading?

A. Streets, grading, bridges, sir.

Q. In that work do you use heavy equipment?

A. Yes, sir.

Q. Have you ever been an operating engineer on heavy equipment?

A. Yes, sir.

Q. At that time were you a member of any union?

A. Yes, sir.

Q. What union?

A. Operating engineers, 965, out of Springfield.

Q. Are you a member presently of that union?

A. No, sir.

Q. Is the business that you operate—do you employ union employes there?

A. Yes, sir.

Q. At the present time?

A. Yes, sir.

Q. How many years of experience do you have operating heavy equipment in your work?

A. Oh—

Q. Such as was available over the years.

A. Well, I operated all the time since I got rid of 1411 the mules, last twenty years.

Q. I will ask you to look at Defendant's Exhibit 10. Are you able to state what that equipment is?

A. That looks like a D-8 caterpillar tractor with a push blade on it and a scraper.

It looks like a L. P. scraper. You can hardly tell from the front.

Q. Mr. Christner, will you speak a little louder? It is awfully hard to hear here.

A. That is a D-8 caterpillar tractor with a scraper.

Q. Attached?

A. Yes, sir.

Q. Have you operated that kind of equipment?

A. Yes, sir.

Q. Will you state what Defendants' Exhibit 9 depicts?

A. That looks like an old Model D-8 with a push blade and 25 caterpillar control unit on the back.

Q. Will you look at Defendants' Exhibit 11 and state what that equipment is?

A. That is a caterpillar D-8. It is a bar, it is not, no front end equipment on it, it has got a caterpillar control unit on it and it is pulling some kind of a scraper, I cannot tell what it is, there is not enough in the picture.

1412 Q. Not enough of the scraper showing?

A. No.

Q. I will show you Defendants' Exhibit 8, and will you please tell us what that depicts?

A. It is a D-8 caterpillar, with a caterpillar tilt dozer on it.

Q. What is a tilt dozer?

A. Well, you can adjust these little things on the side and tilt the blade.

It has got a cable control dozer on it.

Q. Are you familiar with the International equipment of this same general character?

A. Yes, sir.

Q. And of the Allis-Chalmers?

A. Yes, sir.

Q. Looking at Defendants' Exhibit 8, will you state how that compares in size with the Allis-Chalmers' 10 model?

A. Well, this is a little bigger than the 10.

Q. Would you say approximately how much longer?

Mr. FitzGerald: That is Exhibit 8?

Mr. Alexander: That is your exhibit. Is that 8?

The Witness: 8.

1413 By Mr. Alexander: Yes, 8.

Q. Will you tell us—

A. Will you repeat that question, please?

Q. Can you state approximately how much longer than the Allis-Chalmers H. C. 10—is it not—H. D. 10?

A. Well, the [redacted] Model 10 with a short track on it, and then there is a later model 10 with a long track on it. This is, I would say, maybe four foot longer.

Overall, you mean the dozer and blade and all?

Q. Yes, as it sits there.

A. Yes, I would say it was four foot longer.

Q. How about height?

A. Sir?

Q. How about the height of the two machines, how do they compare?

A. You mean—well, I believe the D-8's may be a foot higher.

Q. That is the one you have there, the caterpillar?

A. Yes, this one (indicating). It has got higher track and higher hood, and the operator sets higher too.

Q. Now have you operated equipment of the kind
1414 shown on these four photographs that I have indicated—that I have exhibited to you, Exhibits 8, 9, 10 and 11, as an operating engineer?

A. Yes, sir.

Q. When working the equipment on, say, light grading work or evening up the surface of a levee to take care of slight erosion or the berm of a levee, do you have anyone to assist you in that work of operating the machine?

Mr. FitzGerald: If the Court please, I object to that question.

The Court: Sustained as to whether he had. I don't think that is material.

By Mr. Alexander: Q. When you employ men operating machines of this character as shown in the photographs, do you have anyone to accompany the machine?

Mr. FitzGerald: Same objection, if the Court please.

By Mr. Alexander: Q. Other than the operating engineer?

Mr. FitzGerald: Pardon me. I thought you had finished.

I object to that question.

1415 Mr. Stoddart: For what reason?

Mr. FitzGerald: For the reason it was part of your case in chief and you made it in chief.

Mr. Alexander: They brought the expert engineer in here, Mr. Scaglione, who testified he never saw anyone operate a machine of this kind alone.

Mr. FitzGerald: Wait just a minute. Your Col. Gleason and your Mr. Holcomb and your Mr. Lehmann all testified in chief about it.

Mr. Stoddart: Not until you brought it out on cross examination of Mr. Koesterer. On Mr. Koesterer you brought it out on cross examination.

Mr. FitzGerald: Whether I brought it out on cross examination with him or not, Holcomb and Lehmann positively said it was that, in chief, it was not necessary. It is part of their case.

The Court: I am going to permit the witness to answer whether he does or not.

By Mr. Alexander: Q. Do your men operate these
1416 machines without anyone accompanying the machines to assist them?

A. Yes, sir.

Q. Now will you look at Government's Exhibit 20? Do you know what that is a model of?

A. International TD-24.

Q. How does that compare—

Mr. FitzGerald: Just a moment. T-24, there is no evidence here.

Mr. Oxtoby: There wasn't any evidence of caterpillars you put it in.

Mr. Stoddart: Is there any evidence about these?

Mr. FitzGerald: Yes, sir.

Mr. Oxtoby: Caterpillars?

Mr. FitzGerald: How many of you gentlemen want to get into this?

Mr. Oxtoby: All three of us, we represent the Government!

Mr. FitzGerald: Do you?

Mr. Oxtoby: Yes!

Mr. FitzGerald: There is no evidence in this court, and unless this is identified or explained first by the 1417 witness to be similar to the T-18, which Mr. Terry said that he had there, I don't think that it is competent.

Mr. Alexander: It is the type of machine he said he had there.

The Court: This is?

Mr. Alexander: This is the type.

The Court: Is this the first time it has been offered?

Mr. Alexander: The first time it has been offered.

The Court: Go ahead, answer it. Let's get through with this.

By Mr. Alexander: Q. How does that compare in size with the T-18 model of the International?

A. This is bigger.

Q. That is a bigger machine?

A. The D-24 is bigger than the D-18, it is the next size bigger in the line.

Q. Now will you look at Government's Exhibit 19 and state what that model represents?

A. That is a small one, that is a HD-5.

Q. That is an Allis-Chalmers?

A. Yes, sir.

1418 Q. HD-5?

A. Yes, sir.

Q. How does that compare to the HD-10 in size?

A. This is smaller.

Q. Could you tell us approximately how many models there are between the 5 and the 10?

A. Well, they changed models. The HD-10 was in the older size, and this is in the newer size. This is the smallest of the new series MD.

The HD-5, HD-9, HD-15, and then HD-20, that is the one this belongs to, and in the old models it was HD-7 and HD-10 and HD-14 and 14-C.

Q. This is Exhibit 19, and the International model is Exhibit 20.

Now, do you operate the HD-10 Allis-Chalmers and the International about which you are testifying in your business?

A. I have never operated a 24.

Q. That is a bigger one?

A. That is a late model.

Q. What sizes have you operated?

A. This D-18's, 14's, D-9's.

Q. You have operated the TD-18?

A. Yes, sir.

1419 Q. Now in your practice, in the use of those machines, does your operating engineer operate the machines without a helper or a swamper?

A. Yes.

Mr. FitzGerald: Same objection.

The Court: He has answered. Go ahead.

Mr. Alexander: That is all.

Cross-Examination by Mr. FitzGerald.

Q. Do you employ laborers in all of your contract work?

A. I did not hear that.

Q. Do you employ laborers at all in your contract work?

A. Yes, sir.

Q. When you are doing grading work, when you are grading or working on levees or working on roads, do you not employ laborers?

A. Yes, sir.

Q. Do those laborers, if there is a broken cable, hauling any part of the equipment, do they assist in the replacing of it?

A. No.

Q. They do not?

1420 A. No, the engineers do.

Q. What do you employ them for?

A. Well, to do labor work.

Q. What labor work do they have to do in connection with your earth moving?

A. Sometimes, I don't even have any laborers on the job.

Q. I understand. But what do they do when you do have them?

A. I have them on a hand shovel.

Q. Don't they in any way operate in connection with the tractor machines that you have?

A. The engineers won't allow them around the machine at all.

Q. They won't allow them to clean the track?

A. If it is in wet weather, if an evening—

Q. Of course, they don't have to clean the track unless there is a reason for it, isn't that right?

A. That is right.

Q. Well, if there is a reason for it, don't they assist in that and probably do most of it?

A. Sometimes I do it myself. I don't have a laborer all the time.

Q. I did not ask you what you did. The engineers
1421 don't do it, isn't that right?

A. Some of them do.

Q. Usually is it not done by your laborers?

A. No, no, maybe on a particular job.

Q. Suppose you are doing—

Mr. Alexander: Let him finish.

Mr. FitzGerald: Pardon me. Had you not finished?

The Witness: Sir?

Mr. FitzGerald: Had you finished?

The Witness: Maybe on one particular job if I had a laborer that did not have anything to do, I would let him do that in the evening.

Q. Sir?

A. If I had a laborer that did not have anything to do, I would let him do that in the evening when the job is done.

Q. You would have him do it, but during the day in order to get the efficiency out of the operation of your machine, whether it is Allis Chalmers, International Harvester, or the Caterpillar, the efficiency of the machine depends entirely upon the ability of the machine to move over this track, does it not?

1422 A. Yes.

Q. Now if the track becomes ineffective, either through the accumulation of mud or dirt or brush or anything of that sort, it cannot operate efficiently, isn't that true?

A. It can operate efficiently.

Q. With the mud and all of the other things in it?

A. Yes, sir.

Q. Why clean it, Mr. Christner?

A. Well, the dirt will get hard and freeze up in there of

a night if it is cold, and freeze up in these parts in here, and then it won't allow that roller to turn the next morning.

Q. Won't they affect the roller before it freezes up?

A. Oh, if it stops it altogether, and the track slides on that roller—

Q. That is what I am talking about, if that happened during the day when you are operating, who would clean it?

A. Well—

Q. You mean the engineer gets off and cleans it?

A. Sometimes he does.

Q. Is it not usually the laborer who does it?

A. Never on any of my jobs. I haven't had any 1423 laborers clean.

Q. You don't have a laborer do that?

A. No.

Q. You know it is customary in work of the type you have described that the laborer does that particular job on the job?

A. Will you repeat that, please?

Mr. FitzGerald: Won't you read it, please?

(Question read.)

By Mr. FitzGerald: Q. Cleaning the tractor is what I am talking about.

A. That is really confusing.

Q. Sir?

A. That question is rather confusing.

Q. I don't want to make it confusing, Mr. Christner.

Is it not customary in the general practice of handling big earth moving machinery, that when the tractor accumulates mud and brush, that the laborer cleans it off?

A. Well, if there was one around, I would have him do it.

Q. Well, he couldn't do it if he wasn't around there, Mr. Christner.

A. But I wouldn't employ one particularly for that
1424 job.

Q. No, not particularly for that, but I want to find out if it is not customary, which was my question to you, customary all over the State of Illinois by large earth-moving contractors to employ laborers for that purpose.

A. Never have I seen one employed for that purpose.

Q. You have employed laborers, however, haven't you?

A. Yes, sir.

Q. Are you a member of the Association of General Contractors?

A. No, sir.

Q. Where, generally, Mr. Christner have you been working in the last few years?

A. Oh, in this part of Illinois, part of Missouri.

Q. Have you worked at all in the vicinity of the Chain of Rocks canal?

A. Yes, sir.

Q. Have you worked at all in the area where Granite City, Alton, Venice, Madison, East St. Louis are located?

A. No, sir.

Q. You never have worked over there?

1425 A. No, sir.

Q. You know nothing about what the practice and custom is over there?

A. Only what I have heard.

Q. But you never have had experience there?

A. No, sir.

Mr. FitzGerald: I think that is all.

Redirect Examination by Mr. Alexander:

Q. I neglected one or two questions.

Now when you are operating a scooper, scraper with one of those tractors, is the operating engineer able to operate

the equipment, dump the load that he picks up in the scoop without assistance?

A. Yes, sir.

Q. So that your testimony with respect to the operation of this equipment when attachments are added would be generally the same as when it was operated as a bulldozer, for instance?

A. Yes, sir.

Q. Does the operator need anyone to spot the work ahead of him?

1426 A. Well, if he is—if you have a rig foreman, that sets stakes and checks grades—

Q. I mean anyone to walk in front of the machine and signal when there were ditches or gulleys and show him where to go?

A. You mean a laborer?

Q. Yes.

A. No, I would say he would get run over if he was.

Mr. Alexander: I think that is all.

Recross Examination by Mr. FitzGerald.

Q. You wouldn't think then, Mr. Christner, that a laborer would have sense enough to get out of the road of the machine?

A. Well, if there was room, probably he would get out of the way.

Q. What do you mean, "if there was room"? I cannot understand. Haven't they got the whole area where you are working?

A. Well, they might have a steep bank there.

Q. Sir?

A. There might be a steep bank up on one side and a steep bank down on the other side on a fill or cut

1427 section.

Q. But someone is there where a ditch, as Mr.

Alexander described, would have to advise the operator of the machine if the operator of the machine could not see it, would not that happen?

A. He is supposed to see.

Q. Sure, you wouldn't hire him if he were blind, would you?

A. No, sir

Q. But suppose he could not see, would anyone advise him of it?

A. Not a laborer.

Q. Well, anyone?

A. I would say he could see.

Q. Well, wouldn't you answer my question, it does assume that he cannot see because of the largeness of the machine that he operates.

A. If he couldn't see, he would have to stop.

Q. Well, how would he know that he should stop?

A. Well, the same way you are driving a car, if you seen a lamp post in front of you, you would stop.

Q. I am talking about a fellow who is on there and cannot see, there is no lamp post out there to advise him of the danger, is there?

1428 A. I have never seen it, sir.

Q. I did not ask that. I said, who would advise him if there were a large ditch that Mr. Alexander has described and he could not see it, who would advise him of that danger?

A. Well, it is according to who was there.

Q. Well, who would be there, in your judgment?

A. The grade foreman on my job.

Q. Is the grade foreman a laborer?

A. No, sir.

Q. The grade foreman would have to notify him and notify him in the same way that a laborer would, wouldn't he?

A. On a heavy cut section.

Q. Answer my question. You understand it, do you not?

Would there be any difference in the form of notice given by the grade foreman or laborer who you said would be run over?

A. Definitely there is a difference in what a grade foreman would tell a man and what a laborer would tell him.

Q. Wouldn't they both say there is a big ditch and look out?

A. No.

1429 Q. They would not. What would the grade foreman say, Mr. Christner?

A. The grade foreman tells him whether there is one foot of the cut, two foot, or two inches, or ten inches.

Q. The laborer couldn't do that?

A. No, he wouldn't.

Q. He couldn't do it?

A. No, I never seen one yet.

Q. Is that the reason you don't hire a laborer?

A. No. I wouldn't say that is the reason I don't hire a laborer. I don't hire a laborer because I don't need them.

Q. Isn't the reason you don't hire a laborer is because you are afraid he will get run over by the machine?

A. No, it isn't, it isn't because I am afraid he will get run over.

Mr. FitzGerald: That is all.

Mr. Alexander: That is all.

The Court: Call the next.

(Witness excused.)

Mr. Alexander: I think that is all, your Honor.

The Court: Is that all of the testimony?

Anything further on the part of the defense?

1430 Mr. FitzGerald: Nothing further, your Honor.

The Court: I have some matters concerning this case we will have to attend to. I think I will excuse this jury until one o'clock.

Be back promptly at one o'clock, all of you, if you will.

You may be excused.

(Whereupon the jury retired from the court room and the following proceedings were had out of the presence and hearing of the jury:)

The Court: Now, your exhibits, have you taken care of those?

Mr. Alexander: Your Honor, we are in the same position as Mr. FitzGerald, we should have offered these two models.

The Court: That is all right, they are admitted.

(Whereupon said exhibits were received into evidence.)

Mr. FitzGerald: I have some motions.

The Court: Yes, but now about your exhibits. That is the first thing you want to take care of.

1431 Mr. Alexander: Suppose they check theirs and show them to us, and we will check ours and show them to you.

Mr. FitzGerald: You got them?

Mr. Alexander: I don't think so. We will check them.

Mr. FitzGerald: All except the original report that Callahan made, you have, isn't that right?

The Court: Let's get through with this, and then go into the room and go over these.

Mr. Alexander: I suggest we will check them all and bring them in and check them with him.

Mr. FitzGerald Yes, that is all right.

Mr. Alexander: I presume you want to talk to us first about these motions.

The Court: You don't want to file your motions until you get your exhibits straightened out.

Mr. FitzGerald: Certainly—

Mr. Alexander: You want to do that first.

The Court: Court is recessed subject to call.

1432 (Whereupon a recess herein was taken to 2:00 o'clock p.m. of the same day, September 24, 1954.)

1433 Court reconvened in the above-entitled cause at the hour of 2:00 o'clock p.m., September 24, 1954, pursuant to recess.

Present:

Same as before, to-wit:

Mr. Alexander, Mr. Oxtoby, and Mr. Stoddart, appearing on behalf of the Government;

Mr. O'Neill and Mr. FitzGerald, appearing on behalf of the defendants.

1434 The Court: All right, gentlemen.

Mr. Alexander: We elect to proceed on counts 1, 2, 4.

Mr. FitzGerald: If the Court please, I think the Government should nolle those counts.

Mr. Alexander: That eventually no doubt will be done. It is our custom to report to the Attorney General before we actually enter a nolle.

The Court: We are trying him only on counts—

Mr. Alexander: 1, 2, 4 and 9.

The Court: You elect to proceed on counts 1, 2, 4 and 9.

Have you your record straight, Mr. FitzGerald, on your exhibits?

Mr. O'Neill: Yes, sir, we straightened that out with Mr. Alexander.

Mr. FitzGerald: It is all straightened out.

The Court: Does the record so show?

Mr. O'Neill: The record may show, your Honor, that

Government's Exhibits 1 through 20 were offered and admitted, and Government's Exhibit with reference to
1435 Exhibit 8 we offered portions thereof, and our Exhibits 1 through 11 with the exception of 4—

The Court: Are admitted?

Mr. O'Neill: Yes, your Honor.

Government's Exhibit 8 is our Exhibit No. 7.

Mr. FitzGerald: All right.

The Court: All right. Let the jury come in.

(Whereupon the following proceedings were had in the presence and hearing of the jury:)

The Court: Now, ladies and gentlemen of the jury, this concludes all of the testimony that will be offered in this case.

It now becomes the privilege of the attorneys for both the plaintiff and defendants to express their views and their theories that arise from the evidence that you have heard.

I ask you to pay attention to them, and of course, after all, the verdict in this case is with you; but it is their privilege and right to present the case as they see it from the evidence that has been introduced.

The Government may proceed.

1436 And thereupon Mr. Oxtoby addressed the jury in opening argument on behalf of the Government, as follows:

Mr. Oxtoby: May it please the Court, Counsel for the Defense—

Mr. Alexander: I wonder if the jury should not be told that the case will proceed on counts 1, 2, 4, and 9.

The Court: I beg your pardon, yes, the Government in this case has elected to proceed on counts 1, 2, 4, and 9, so you need not consider the other counts.

Counts 1, 2, 4, and 9 is what the case will be presented to you on. The others will be dismissed.

You may proceed, Mr. Oxtoby.

Mr. Oxtoby: May it please the Court and Counsel, and Ladies and Gentlemen of the Jury:

His Honor has told you that the evidence is all in, that it is our purpose and privilege of counsel, so to speak, to give you at this time our views as to what the evidence is in this case.

It has been a long trial, and I am sure that when
1437 I say that you have been very patient, I speak for not only the Government side of the table but for the defense as well.

Because argument is necessarily limited, I suppose otherwise lawyers might talk all day, but time is limited, and I will tell you in advance, and I think my promise will be good, that I shall not exceed one hour, at which time the defense will argue, and then Mr. Alexander, my colleague on the Government side of the table, will make the final argument of the day.

This has been a long trial, and I think I am correct when I say there has been almost nine days of testimony, and it is of course impossible for me, if I could, to summarize what each and every witness said. I couldn't do so, I don't have the time, and all I can do in argument is to try to marshal the evidence as we see it from the Government's side of the table in this case, to hit the high spots, to bring forth again the evidence of the witnesses on the facts they have stated to you, and try to paint a picture for you so you can put the case in greater perspective for your determination.

1438 As his Honor stated, the Government has elected to proceed on counts 1, 2, 4, and 9, and briefly, count 1 charges that on April 13th, involving the Terry incident, that the defendant by force and violence, or by threats of force and violence, in pursuance of a plan of extortion, obstructed interstate commerce. That is the Terry incident on the 13th.

Count 2 is the Wright incident on March 26th.

Count 4 is again the Wright incident on March 26th, but involves this time the use of force and threats, of force and violence or threats of force and violence, extortion as against Frank Luhning, an employe of Ralph Wright, Jr.

And count 9 is the conspiracy, a count which charges that the union, which is a defendant here, and the defendant Jack Green, conspired, combined, confederated and agreed together to do something in violation of the law and that violation is that they were to obstruct and impede interstate commerce by extortion, by threats of violence, or by actual violence.

1439 I might say to clear up another matter that it is not the Government's position, nor does the indictment charge, that the crime was ever consummated or completed.

By definition "conspiracy" merely means that people get together and agree to do something that is unlawful. It does not contemplate necessarily that the act was ever completed.

The indictments outside of the conspiracy count, which is count 9, counts 1, 2 and 4 charge that Jack Green and the union together jointly did certain acts to obstruct interstate commerce, or they attempted so to do, and his Honor will instruct you that it is a violation of what is known as the Federal Anti-Racketeering Act, it is just as much a crime to complete the actual extortion itself, just as much a crime to attempt it as to complete or conspire.

There are three crimes defined in the statute, the completion, the attempt or conspiracy, and the evidence clearly here is that no actual money in the form of unwarranted or fictitious labor was actually imposed upon Terry or on Wright. They merely attempted to do it because,

1440 as you have heard, and there is no dispute about it, Wright quit and moved out, and Terry went across the river. They never did employ laborers.

So our case is one of attempt and one of conspiracy, not that the crime was ever completed, and his Honor will instruct you that that constitutes a violation—two separate violations, if you believe it beyond a reasonable doubt, of the Federal Anti-Racketeering Act.

I need hardly elaborate further on the point, which is a part of the law in this case, that the burden rests upon the Government in this case. We have a duty, of course, as it should be in America, to prove to you beyond a reasonable doubt the guilt of the defendants in this case of either the attempts to violate the Federal Anti-Racketeering Act or conspiracy to do so.

There has been a lot of evidence here, some of it in my opinion not exactly germane or relevant to the issue that we are necessarily involved in, but it is a fairly simple picture that I will try to paint for you to show that the defendant Jack Green and his union by threats of
1441 violence and by actual violence attempted to force two contractors to do something that would in the long run take their money for something they did not have to do, and they used threats and violence to obtain it, and our story starts out—

Before I get into that, I might just advert for a minute to the interstate commerce angle. We are here in the Federal Court because the jurisdiction of the United States can only be had through the fact that interstate commerce was obstructed or impeded or affected as the statute says, and I quote "to any degree," and it is of course the position of the Government that on the Mississippi River, which I think is a matter of fact that his Honor will charge you, of course, is a conduit of interstate commerce. There cannot be any question about the great inland waterway of the Mississippi and down around the Chain of Rocks, to get around certain barriers in the river, it was necessary to build a 9-foot channel, and that the levee is an integral part of that channel and that channel is used in

interstate commerce, and I think his Honor will in-
1442 struct you, if you believe Col. Gleason, and I don't think his remarks are disputed, that nine-mile canal used by ships, I think he said over 12,000,000 tons will go through it or have gone through it up to now, that it was in interstate commerce, that if you believe that is true, then as a matter of law interstate commerce has been affected within the meaning of the statute.

1443 But in any event, what is more, Colonel Gleason testified that protected by this levee, which would in case of a flood protect various industries, and most important of all the largest engineering depot in the world, the Granite City Engineering Depot, which sends material to all states of the United States, and if you believe that and it is not disputed, then as a matter of law, interstate commerce is affected. I will not advert to it any more.

I will proceed to the picture which I have previously spoken of as to what happened.

I think the starting-off point is March 26, 1953, and if I may digress for a moment, it is significant, and more than a coincidence that involves the defendant union and defendant Green, that both of these events started—that the Wright job went down on that day and that the Terry job that was interfered with and stopped, prior to that, March 23rd, if you will remember on the Wright job there was an engineer by the name of Frank Luhning, there wasn't any agent or a person who, if you please, could or could not tell was a member of the union—the defendant him-
1444 self, by his own definition a powerful man in the union, the business agent, came out to the Wright job on the 26th or the 23rd of March, held a conversation with Luhning, and as a result of that conversation Luhning stopped on the job and it was the next day that Wright got in contact with Green, and Wright said, "I don't think it is necessary to have a laborer out on the job or a swamper, I have had a lot of maintenance jobs for the

Government and I am not going to put one on. I am going to pull out if I have to," and Green said, "That is the thing to do."

Remember that on the 26th and following that, while the Wright job was working, that six men came out, and of course the very fact that six men were there is enough for you to raise a reasonable inference that force and violence is what was used there with only two machines working that day, and I don't know what two men are supposed to do who are union men when six or eight hundred laborers come out and shut the job down.

On the same day Terry is moving up and down the levee on a maintenance job, no trees or brush to pull out
1445 of it, no construction work going out, he is filling rivulets, if you please, he has got a job out there where he rents equipment to the Government and furnishes what he believes to be enough labor to complete the job. He has an operating engineer and six or twelve men, I forget what the evidence is, came out and shut the job down.

We might characterize that, to use the definition of wartime, as "Day minus about 16" because there was a long, long time that intervened between what happened on the 26th and what happened on the 13th.

I think I am quoting counsel correctly for the defendant when he told you that on the 13th this thing was kind of a spontaneous combustion, that things flared up and spread like wildfire through the factories, and all of them, all of the men, went out there. But remember there was a prelude here of the shape of things to come, and there was a long, long time for consideration and debate, and the use of ordinary, legal methods.

In fact, there was even a stated union meeting between the 26th and the 13th of April at which time the busi-
1446 ness agent, Jack Green, reported to the members of the local—this is four days before the 13th, al-

most ten days after the 26th—thirteen days after the 26th—that there had been trouble out on the job and that Terry and Wright were not employing a swamper, told them all about it.

There were all of the officers at the meeting present, and everything else.

What happened next? The 12th of April arrived. Terry has received instructions from the War Department to proceed with his contract. The War Department and Corps of Engineers feel—and to advert again to Colonel Gleason's testimony—that the erosional damage on the levee should be kept in constant repair and they should get along with the job of repairing it because otherwise you would damage this interstate water roadway of commerce.

So Terry gets orders to proceed with his contract and he makes preparations, and as he told you and as his—let's admit it—his wrestlers and bodyguards, that he went to get, he told them that he feared trouble on
1447 the other side of the levee and that he had been threatened, to show his state of mind. He figured there might be trouble, and he went and got and hired two men who he knew were police officers.

But Terry did not show up on the levee, and I think I may be anticipating an argument—maybe I am wrong, I don't know—but I think that I am anticipating an argument that Terry provoked the local and Green to cause the acts were committed at that time.

But Terry did not on the 13th—Terry did not show up on the 13th unannounced, unheralded, with bodyguards—armed bodyguards, to commence the job.

He did what I think is a prudent thing for somebody to do. He went to the chief law enforcement official of Madison County on Sunday with his two bodyguards so everybody could get acquainted, and told them that he

anticipated some trouble on the levee the following day, that he had received instructions from the War Department to proceed with the erosional control upon the levee, and that he thought it was prudent and wise, con-
1448 sidering what had happened in the past, to have some bodyguards.

And as I remember the evidence, Kellerman came down, who is the chief Deputy Sheriff, the man underneath the Sheriff, and they talked about the next day. Fricker says, "We never gave them any permits for guns," or something like that—I forget whether it was Fricker or one of the other Sheriffs—but the very fact that two police officers came over with a man from Missouri and talked to the Sheriff's office the next day, and they are being assigned as bodyguards, I would suppose there would be at least a tacit permission for them to carry arms, if it makes any difference at all.

Bodyguards generally are to protect the body, and they generally carry guns, I would think, and they talked it all over with the Sheriff that day and told him they would be back the next day, and back they were.

And the Sheriff, having been notified, was out on the levee. It wasn't anybody showing up with armed guards from across the River, you might say, and an invasion of Madison County from Missouri, or an invasion of
1449 Illinois from across the River. The Sheriff knew they were coming, and I think the Chief Deputy was out there, at least with three Deputies, Fricker, Turner and I think Musso, and they proceeded to work.

And all through this picture that I am going to paint, and I am anticipating an argument of counsel, the name Green pops up and pops up. It is, of course, true that when people plan to commit a crime they don't leave any more footprints than they have to. The union is not going to make any resolution in this case to do an act against

the law. That is not the way crimes are perpetrated. They are done necessarily by stealth and by zig-zagging around.

There is not any resolution that the union passed that they should go out and violate the Anti-Racketeering Act, but that is no reason they did not violate it.

But Terry arrives at the levee with a union man, and there is talk down at the union hall about "scab labor," as I understand the term "scab" that means somebody that is not union, non-union. He has got union labor out there, he has got a union engineer, He has only got one piece. This is, I think, a $4200 contract, small. 1450

The whole canal cost $44,000,000. I imagine the maintenance of it is a million a year, I have no idea, but I think $4200 to repair some erosional damage is infinitesimal a part of the total project.

There is one man working down there on the berms so-called, filling up small rivulets, smoothing things over with a scoop.

And Lehmann, certainly if you ascribe to Terry possible reasons why he might be violating—that his testimony might be affected—certainly Lehmann with a Corps of Engineers, a man who sat through there, whose testimony is unimpeached, I might add, an impartial observer, is out there merely as someone to see the Government gets its work done. After all, it is a rental of equipment, and what to do is pointed out by the man from the Corps of Engineers, and that is Karl Lehmann.

Karl Lehmann is out on the levee to direct Terry's equipment, his one piece of equipment that day, and he sees a Cadillac pull up upon the bridge, and then he sees it come down and over to the ramp where the Sheriffs are, he has seen the Sheriffs that day and there are three of them, and it isn't an antagonistic party that is out there. The Sheriffs are not marshalled on one 1451

side in armed array and the bodyguards on another armed array, but they are all sitting, as I understand it, in the back end of the car discussing sports. Two of them happened to be wrestlers, and one of them is a professional football player, Mr. Musso.

This is where Fricker's testimony gets silly. He says they didn't have any permission to be armed, and yet they are out there with them talking about guns and swords. One might raise a reasonable inference that Fricker as well as the other Deputy Sheriffs were less than frank in this case.

But in any event, everybody is talking back and forth, and the Cadillac goes up on the ramp and the defendant Jack Green has a conversation there with Mr. Fricker.

Terry is there at that time. Jack Green is pointed out to him as being the business agent of the union, and that is his Cadillac over there.

1452 There is lots of time—there is lots of time to pause and reflect. It wasn't the first time Green knew about it. He knew about it on the 26th, and he reported it to the union on the 9th.

He is out there that morning and he is out there that morning because Terry called him and told him that he was going to start to work, that the War Department had ordered him to work and he had a rig or a bulldozer or a scoop out there, or something, and asked him what he was going to do about it, that he was going to work, and Green said, he said something to the effect or in substance, "Well, you are not going to work without a laborer or a swamper," and he says, "What are you going to do about it, if I don't? Put up a picket line?"

He says, "No, I will take care of you, though." A threat of things to come? After all, a threat, ladies and gentlemen, is a statement of something that is going to happen in the future. It may not happen in the future

because you give in to the condition of the threat, but the threat is there nevertheless, and the statement, "I
1453 will stop it someway," whatever the substance was of that, I leave that up to you.

Green drives out to the levee. In the meantime also Fricker has gone down, or taking the view most favorable to the defendant, and to believe Fricker on this point, he has called Jack Green. I don't see that it makes a lot of difference whether he went down to the hall and conversed with Jack Green or whether he called him on the telephone.

The fact remains Terry called Green that morning, and that Fricker had a conversation with Green that morning, and the Sheriff was out there, the law enforcement officials, and Terry is going to work.

And of course there is pretty general agreement, I would suggest, in the evidence that follows so far and the fact that a large number of men arrived by car and that a large number of men surrounded Terry's car, and also the rig or the bulldozer down on the berm. We know that they got out there.

Isn't the question in part of this case: How did they get out there? And what kind of testimony is there?
1454 Without going into what exactly happened at the levee at that time, let's go back a minute and see what kind of preparations are being made.

I remember again counsel in his opening statement said that—I will probably keep repeating it—that there is something spontaneous going on down in Granite City and the environs. Suddenly the word was passed hither and yon to the factories that something was going on out at the levee. Of course, they already knew about it on April 9th when it was reported to the meeting.

But he is back at work again, and what happens down in Granite City? All of a sudden men are leaving their factories, and here is the Rust Company with a big job at

the Granite City Steel Company, it has 400 men, if you please, under their employment to do a construction job for the Steel Company, and I am going to talk in this regard about Mr. Lauer, who you will remember, Mr. Lauer, a man who is down now at Oak Ridge on the Atomic Energy Project with the Rust Company, certainly a straightforward man, had no reason to vary his story one way or the other, told exactly what happened out
1455 there, and he said he noticed all of the men leaving at the Steel Company, and he wanted to know what was going on.

Who does he talk to? He talks to the man whom he should talk to, in Local 397. You talk to Green. And he does just that, he calls up Green and he says, "What is going on? The men are all leaving."

And Green says, "We are having a little meeting down at the hall," and he says, "What should I do about paying?"

And he says, "Dock them all for two hours, and it doesn't involve you."

It seems to me that you are a pretty powerful man in an association when you can say—if he didn't know why they were leaving, as he took the witness stand and said, to say, "Oh, well, knock them off for two hours on their pay," which I imagine is a rather important thing in a family man's consideration—but Green said, "Go ahead and knock them off their pay, and it doesn't involve you, and we are having a meeting."

Green takes the witness stand and says, "Well, I said that, but I didn't mean that because I thought there
1456 was a dispute out at Granite City. There had some disputes arisen out there and I thought that the men were leaving for that reason."

But if that is true as to what he said, why didn't he say to Lauer, why does he say to Lauer that "We are just having a meeting"?

After all, if they have been pulled off because of some dispute out there that he does not know about, why would he—how does it cover up what he said to go tell Lauer that they are just having a meeting? After all, it would be his duty, and you would think he would find out what the trouble was.

In any event, that wouldn't be the answer he would give to Lauer, that "We are just having a meeting down here."

The only reasonable inference is that Jack Green at that time was telling the exact truth, that he was calling a meeting down at the hall and that is what the 400 men are coming up for.

Now what is more important with that particular incident is—I don't know why 400 men would leave a given project en masse without somebody sitting up there 1457 pulling the strings and giving the directions.

After all, it was Green's own testimony that he can't put up a picket line and how difficult it is because he has got to go through this rigamarole. If it is that difficult, certainly no 400 men in that union are going to go off walking from a job without having somebody telling them what to do.

And I think the reasonable inference in this case, and in fact the only inference, is that Jack Green was sitting back at headquarters masterminding this deal.

Now he says, when the defendant took the stand, says "We never had a picket line before in this neighborhood in Granite City," and as I understood his testimony, they had always been able to settle everything by reason, if you please.

Then he made the significant statement to the question by Mr. Alexander, "Why didn't you put up a picket line in this case?" and before he could catch himself, he said, "We didn't have to put one up in this case."

That is exactly the truth. He did not have to put
1458 one up because he was out there with a show of force and had accomplished his purpose in one hour and twenty minutes rather than waste his time with a picket line.

He says, "Why shouldn't Terry come and see me? All of the big contractors come in and see me when they come in. They come down and get my O. K. to work in Granite City."

You would think this is a declaration of war by the defendant Green and his union to run their County down there the way they see fit to run it, and they don't care about anything.

The Sheriff certainly cooperated with them out on the levee. As near as I could figure out, the chief law enforcement of Madison County was running back and forth trying to, if you please, drive Terry off that job. But Green says, "I can always reason everything out." He says, "We don't need picket lines. We have never had a picket line."

Why didn't he reason it out with Terry if, in fact, he is being truthful to you members of the jury?

He had lots of time. After all, there was back on
1459 the 26th of March that Green knew about engineering contractors running equipment to control erosion, and they did not have a swamper. He knew about it and did something about it then.

Men went out and stopped it. He personally went out and told Luhning that they would have to have a swamper.

Wright calls him and says, "I am not going to put a swamper on. I will pull out before I have to," and Green says, "That is the thing to do, pull out."

Both of them on the 26th, moved up again, thirteen days to April 13th. Three days, four days, before this incident, he is reporting it to the union and Bill Hayes, their own witness, they vouch for their own witness' credibility. The

Sheriffs are not our witnesses, we did not call them. I don't vouch for any of those Sheriffs' credibility.

Their own witness Bill Hayes takes the witness stand and says Green reported they were negotiating with Terry.

What kind of negotiations? Didn't do a thing!

1460 Paddles over to see, so he says, the Corps of Engineers. The Corps of Engineers, why, rightly says, "We make our contract with the contractor, it is between you and him. It is not our business for the Government, or at least for the Corps of Engineers, to get into these things."

But he has got a lot of time to reason, to use sweet reason, and I suggest the reason he did not use sweet reason is that it isn't in his nature to use it, that down there in Madison County, in the Tri-Cities, or what it sounds like to me, in the Quad-Cities area, he is a Colossus that bestrides that world down there and everybody does his bidding, and when he wants something done, they pour out of the factories, 400 out from one place, and 145 from another place, and he says, "Knock them off the payroll."

Imagine a common laborer who gets about $2 or $2.15 an hour and every man that day loses $4-plus for following Jack Green's order, but that does not make any difference to him, "Call them off the job!"

1461 Granite City Steel, down at the Dow Company, and we know by computation that there is over 600 men in those groups besides men spread out all around this Quad-Cities area where he stands like a Colossus telling people what to do, giving an ultimatum to people and to contractors. "They come and see me!" "I am the boss down here. When this two-bit contractor comes in on a $4200 job, after all there was a $44,000,000 job in my place, they come to see me." Isn't that the reasonable inference?

But here is what he says, and I suggest and I am being very charitable, that the defendant was less than frank, I

leave it to your own conclusion as to the proper characterization of his testimony, but he still has got time, he has from the 26th to the 9th, he doesn't do anything but report it to his union. He has got from the 9th to the 13th and he doesn't do anything, and he has got lots of time on the 13th of April. He had plenty of warning that Terry was coming over. Terry called him up.

I leave it to your own good judgment if it is not a reasonable inference that Fricker called him up. They
1462 have known each other for 25 years and Fricker seemed awful friendly on the witness stand. The Sheriff's office is notified and the Sheriff goes out to the levee and Terry comes over with two bodyguards, gets real chummy with the Sheriff, and they discuss sports and guns, and Green comes out in his Cadillac and talks to Fricker, and there is Terry down on the levee and there is this machine operating without a laborer, why didn't he let reason prevail at that time?

He says—you heard him—he said, "Well, I am not going to go down and argue with two armed men."

Ladies and gentlemen, there were three Sheriffs out there. I saw Mr. Muso on the stand and I saw the wrestler bodyguards. We are going to hear an awful lot about, I imagine, in the next hour, about that.

I would suppose that as chummy as they had all become that morning, and after all they did not come over there as a surprise raiding party, a filibuster over from Missouri, they had given warning, everybody knew about it,
the people that should know, the Sheriffs, and the
1463 Sheriff's men are out there, the three of them, Muso is big and they are all just having a good time out there talking about football, wrestling and guns.

Did your think Green was afraid? Why didn't he go down and try to settle it then? Why didn't Green go down, as he said the Sheriff said to him, "Why, that is just a technicality, let the court settle it out"?

Green could impose a picket line on that levee, they could fight it out through the N. L. R. B.; I suppose, if he had put a picket on, the operater would quit. I don't know. There are ways of settling labor disputes if they are really labor disputes.

That isn't what is going on down here. Terry is the kind of man who, if you pardon me for using the expression has some "guts" and he doesn't give in to them like Sexauer does. You remember when Sexauer said, "Well, when you are in that jurisdiction, you put one on."

Longfellow has got four pieces of equipment out there and one laborer and he says he does about an hour's work a day. That is the time one of them went fishing.

1464 But Terry decides he is going to stand up against him, and more power to him, rather than to supinely give in to this dictator. Why should he give in to him? He doesn't need him. In his opinion, he doesn't.

Certainly there is a lot of testimony in this case on whether swampers are or are not necessary. You heard the man from Quincy telling you that he never used them and never heard of them being used.

Anyway "necessary," whether something is necessary or not, "necessary" is a state of mind. Terry didn't think they were necessary, therefore he didn't want them.

The indictment does not charge that they tried to extort money because they were unnecessary. The indictment charges because it was unwanted, they were unwanted, in Terry's opinion. He is the contractor. He is the fellow that bid on the job. He is the fellow that wants to make a little money. He took into consideration the fact he could work it without a laborer and make money, and with a laborer he would lose money, and he is the guy renting

1465 the equipment and the guy that bid on the job presumably to make a profit, and he is obviously the one

who thought that a laborer was not wanted. That is a little bit beside the point.

The point of it is that Green could have done something, and let reason prevail. I leave it to your consideration again as to whether this man Green really and truly made any kind of an effort whatsoever, or that it even went through his mind, that he was going to do something; but the bodyguards stopped him.

I submit that it never went through his mind; that he went out to that levee to see if Terry was actually working and that he was going to show him, and show him he did.

Remember the question, "You did not put up a picket line, did you, Mr. Green?" and the answer, "I didn't have to put up a picket line here," and you bet he didn't.

He accomplished everything he wanted by sending 1,000 men out there, 1,000 men out there to surround that equipment, to surround that car, and they even got fouled up a little bit and surrounded a Government truck that was 1466 paddling along the levee. Nobody saw it but Green.

I suggest to you what inference—what reasonable inference that raises. Green was in the court room all of the time that that testimony went on. But none of them, —as to what occurred out on the levee, let's get some of these statements in our mind, as to what Green said, "Circle that car!"

Somebody said, "Let's bash the head in," or "Push the gun down his throat!"

They kicked the car when it left.

He said, "You get over," and some profanity, "on the other side of the River, and you are out of business, Terry, on this side and on the other side, and I will run you out of business wherever you go and you take your scabby ways and go across the River."

There are a lot of statements like that. That isn't just what Terry said.

Who is it standing there, an impartial observer, works for the Government? You saw him on the witness stand.

1467 The credibility of the witnesses are up to you. I suggest that Karl Lehmann, sitting there in a truck by Terry's car, was telling the absolute, unvarnished truth as to what occurred, and he heard every one of those statements.

And what is more, he saw the defendant Jack Green, "Scotty," take a swing at him, when they moved up close. As near as I could figure out, the Sheriff was running back and forth there doing Jack Green's bidding, and when Terry showed a little guts and persisted in staying, that Green just moved over and circled his car and said, "You get over on the other side of the River. Stay there, and don't ever come back here again, and you are out of business on both sides."

Drive a man out of business in America in 1954!

Terry had to come back in the middle of the night like the Arabs to get his equipment and move it across the River. That is another interstate angle in case you need any more. Move it across the River in the middle of the night. In America, 1954!

Of course, this is just a part of America, down there
1468 in Madison County, where apparently as Jack Green says, "I am a powerful man in that union."

And you are a powerful man any place if you have 1200 to 2000 people who are under your control and jurisdiction, and you are the business agent of a union, and they are all paying dues every month to that union while they work down there, you are a man of importance.

And the evidence is that he was pretty important. He says so himself. He was more than important. He was powerful.

And Terry didn't come down to see him on his little contract.

He goes out to see if he is working, and out he comes with this army to enforce his law.

Remember how they talked, over-weening arrogance, every one of them, talked about "Well, it is our work, it is our jurisdiction, when we see something we don't like, we stop it."

Green says they got to put on a laborer to keep "our jurisdiction." You got to do those things, and if you don't do them, out come the boys, and out they came that day on April 13, and Terry got across that River and
1469 got across fast. Bodyguards even got separated, and as one of the Sheriffs said, "One of the bodyguards stuck to me like a fly to flypaper."

I just wonder how alarmed Mr. Green was that morning when he said he would have liked to go down to that Terry and reason with Terry, but he had all of those armed guards around there.

In the first place, I don't know how he knew they were armed then. If they were armed, assuming that if he knew it, the Sheriff, everybody was there, it could have been worked out. That isn't the way he does things.

As he said on the witness stand, "I don't use a picket line. I haven't used one for twenty years."

I leave it to your good judgment why not. "I didn't use one that morning, didn't even attempt to use one," and as he says, it is common practice, it is standard operating procedure with him, he says, to reason things out.

You observed the defendant on the witness stand. I leave it again to you to decide whether he is the kind of man that reasons anything out when it comes to a test of his authority.

1470 When you throw down the gauntlet to Green, he doesn't answer in the way that the law is set up to answer something. There is a whole system of law in this country as to ironing out these disputes.

Some of them have gone into evidence. I don't know what they are. There is some evidence about the contractor selects one and then they arbitrate, something like that. Isn't that the way we do things in America? There is nobody can take the law into their own hands.

But remember Skeen when he took the stand, the vice-president? He is Green's henchman. He is the Executive officer, so to speak, of the army down there, in the Tri-Cities area. He is the next Colossus.

Mr. O'Neill: What did you call him?

Mr. Oxtoby: Colossus, he is the next guy down there. Skeen says, "Why, when I leave any place, all the men follow me."

Green and Skeen were talking back and forth. Remember Skeen's testimony on the stand, he said, "Our jurisdiction, we have a right, the laborers have a right to
1471 do this, we have a right to do that."

What right? There isn't any law that says a bulldozer has to have this or does not have to have this. There isn't any law I know of. If there is a dispute, there is a way to handle it, and the way to handle it any place in America is not to keep your own little private army around to move when you want to move, snap, snap, snap! Pull the strings, sit back there in the union hall.

Now, to get out of that trap, defendant says, "I went out to the levee there, he was working, and I always let reason prevail, but I was afraid of those, all of those bodyguards." Even though the Sheriff was there. So he goes back to the union hall, and all of a sudden the men are pouring in, and he says to them, "Boys, be careful. I don't want any trouble."

And he takes a round about way to get out there. I didn't quite understand that, but he gets out there.

Remember how hard counsel worked when one of their witnesses told the truth, Mr. Turner, a Deputy Sheriff, who

said that Green was in the first bunch to arrive, and
1472 counsel worked and worked and worked to get him to change, and he finally comes around and says, even more emphatically, he was in the first group of cars to arrive.

I ask you, how does Green go by some old slue road, or something, down 20th Street, and he gets out there real quick, but everybody else goes out there by 66th and across the River, how does he end up in front of the procession, or do you believe Green rather than Turner who was there?

Lehmann, who was an impartial observer on the scene, standing there and viewing it all, can't do anything, of course, he is circumscribed too, he is standing still, he knows what might happen.

He says Green was one of the first in the group to arrive. In any event, Skeen goes down to the hall, he is the vice-president, he goes down. You heard, and I am going to talk about another witness now, who has a name like Lauer, except he is called Bauer.

You remember Mr. Bauer, probably as honest a man as ever lived, takes the witness stand, with that little
1473 accent, and he just gets up and tells the truth. What does he tell you?

He says that he is down there in the tool room or down there, I think, mopping up. Skeen comes by and says, "Come on, close up, we are going down to the hall."

Bauer, he is just one of the serfs there, he is just one of the guys. So he does what he is told. He gets into Skeen's car and goes down to the hall, gets down to the hall, says that one of the first people he saw, he says, was "Scotty," and Green says, "Where you been, Skeen?" or "Dale," or whatever they called him, and then they go off for a huddle.

Bauer says he stands around for a while, he doesn't know what is going on, and Green then says, "Let's go, and don't pay any attention to the Deputy Sheriffs."

Who do you think is running that County down there? I submit to you that Mr. Bauer is telling exactly what happened down there, and that is exactly what Jack Green said, and that Jack Green is running that County, and he has had his ego, or his pride, or something, hurt that
1474 morning, Wright just pulled out, Terry doesn't want to do what he wants him to do. Terry comes back to buck him, and he is going to show him, and show him he did.

As he said on the witness stand, "I didn't need a picket line," and out they go.

I am not going to try to remember—it is up to you—it is impossible for me to remember what every laborer said. We called, I think, almost fifteen, who said—some of them, "I don't know where I was going, I just went along," like a private in an army. "We left the factory."

"Somebody said, 'Let's go.'"

You remember the guy that was down in the hole doing something in one of the blast furnaces, he is way down, dirty, in the "soup," I think he called it, and somebody hollered down the hole and said, "Come on, we are going down to the hall for a meeting." He was another one of these guys like Bauer.

If there was ever an honest man, those two are them. So he climbs up the ladder. Of course, by that time, everybody is gone. So he goes down to check out and the
1475 question was asked him, "Did you see anybody else at that time?" He says, "I must have been the last one."

There are 400 men at that job, they are all gone, gone quick, they are gone in the time it takes him to climb up the ladder, change his clothes, and they are all gone.

Now Skeen gets up and says, "There wasn't no meeting at the hall."

Well, how did you happen to got to the hall? "That is on the way."

I am not familiar with the topography of Madison County, but nobody else said that, either their witnesses or anybody else's. Skeen was thinking pretty fast on the witness stand on cross-examination, and he evidently thought too fast and figured he had to figure out a way as to how he got to the hall because they were not having a meeting, he didn't know how to go there, he says, "It is on the way." Nobody else says that.

But they all admit there was quite a crowd down there. Even the defendant says there were a lot of cars down there and a lot of people. I don't think there is any doubt about that.

1476 I think you can use your own judgment on these matters. I don't know, as to how many men, whether 500 or 1,000, 1,500 some of them gave, got out to one place without somebody telling them how to go. It is quite a distance out there by automobile, and I suggest that in your jury room these exhibits will be in your jury room, that you take a good look at those pictures which Mr. Terry took as to the cars lined up in military array, one after the other.

I suggest that somebody led them out there. It is a nine-mile canal. A general remark at the factory, as one of them said, "Some boys over the fence said there is some trouble out at the Chain of Rocks."

Well, nine miles is quite a distance, at the Chain of Rocks. After all, Terry, isn't working up and down the locks. He has got just one little dozer down there and just one little part. Where do you go? Who tells him how to get there?

Green tells him how to get there, he tells him to go there, and he leads the procession, as Turner said, their own
1477 witness, the deputy sheriff. Green was in the first bunch of cars to arrive. He leads the procession.

Skeen was one of the first of the witnesses they called.

After all, the union is on trial. Green is on trial. Skeen is a vice president in the union, a very important man too; and Lauer, who is the job superintendent or something out at Granite City and does a big job out at Dow Chemical Company, while the laborers are out there, 145, I think, Barton, he is in charge of that. And he sees all of the men go too.

Well, he has got the vice president of the union in his place, so he doesn't call Green. He talks to Skeen.

Remember when Skeen took the witness stand. He says he heard Bill Hays talking about it. Bill Hays isn't even a steward, although he has since been promoted. He is a steward now. But he says, "I heard Bill Hays"—one of the privates—"talking about it." So everybody leaves.

Lauer, of course, didn't tell Bauer, "Come on, let's 1478 go, they want us down at the hall for a meeting."

But Barton is a member of the union, certainly an unbiased witness in this cause. He said he talked to Skeen, Skeen said it didn't concern him at all and not to worry about it. He said they would be gone for a while. They got knocked off the payroll too for a few hours.

Do you believe Skeen knew or did not know what was going to happen that morning? You remember he got by the union hall early on his way to work, had a conversation with Green at that time. By that time Terry had called Green up. This is on his way to work. He gets to work at eight o'clock. He says he talked to Green, Green told him something about the deal at the Chain of Rocks, what they call an unfair job, scab job, or something. I don't understand those terms, unfair job out there doing our work, he said.

Skeen goes to Dow and then the big exodus starts at nine o'clock. And out they go to the levee.

But they first go down to the hall.

Ladies and gentlemen, when you have a meeting,
1479 or when an association of men such as Local 397
wants to do something unlawful, and as we submit that they did, violating or attempting to violate the Anti-Racketeering Act and conspiring with Green, their business agent, to violate it, you don't enter formal resolutions. Nobody is going to pop up at the meeting and say, "I move we use force and violence to achieve our ends, and we impede interstate commerce while we are doing it."

You are not going to find any resolution in these minute books saying that the union passed a resolution to engage in racketeering. People when they are going to racketeer don't make pronouncements to the world and neither do voluntary associations of working men. They don't enter resolutions, and when they hold meetings and decide to do something unlawfully, they generally don't have somebody with a gavel, and they don't necessarily have them meet at the hall. They can all just come down there in a body and then out they go.

His Honor will tell you that it takes clear and convinc-
ing proof to make the union a guilty party to this
1480 conspiracy or this joint attempt with Green to violate the Anti-Racketeering Act.

Green says he has got about— I forget the exact number of men in his union, but he says there are two hundred or three hundred, I forget. There were fifteen hundred of them out there, and lots of them were union members of his local, but they were all under his supervision and control because of the union regulations that when you go into another local you are under the jurisdiction of that local and therefore you are under the control and supervision of the most powerful man in the union, the business agent.

Clear and convincing proof!

I submit that when the entire membership of the union,

together with practically everybody under their control, to the extent that they are willing to give up two hours of wages, to the extent that their business agent and vice president are around, and there are lots of job stewards, "Coon Dog" and a few of those other boys are around, that it is a union activity and that they were with Green violating the Anti-Racketeering Act on that morning of April 13th when they went out there with threats, if you please, threats that came true almost, of force and violence.

They did use force and violence, seven hundred to fifteen hundred men in a body milling around, around this equipment is force and violence in any definition of the term. When there is just one man in there, and another man on the machine, it is.

You remember what Voyles testified to. He is the operator on the Terry machine, he says that about one hundred and fifty of those men circled his machine in front of him, back of him, "I couldn't move, told me I had better get off. I got off. I left my scoop up and the engine running."

He didn't have very much time, and off he got.

They came up and circled Terry's car, force and violence! Green took a swing at them, used all sort of language about "get over to the other side of the river and don't come back, you are a scabby laborer, you are gat-slingers," all that other language.

Various people in the crowd saying—remember what the sheriff said when his memory was nudged, "Didn't somebody say, 'We ought to bash his head in'" or something?

The sheriff said, oh, he was just a little fellow, a little fellow with fifteen hundred men around him. This crowd at the levee, that is force and violence, and threats of force and violence.

And Terry and the bodyguards knew that the force that had been exercised and the threats of more force were enough that it behooved them that they had better get going and they left.

One of the bodyguards could not even go over to Terry's car. He even had to ask protection from the sheriff to get him out from the river up to the bridge.

Who was directing things out there?

Let me ask you this, and this is certainly undisputed:

1483 There are fifteen hundred men out there and they are milling around as one of them put it, I think Skeen said they were "stampeding around", and one of the deputy sheriffs said, their witness said, "Well, it wasn't no hand-shaking affair", and the other one says, "I wasn't out there to make acquaintances." And I guess it wasn't a hand-shaking party, putting it mildly.

They are milling and stampeding around, and nobody is shaking any hands. And they stop a government truck that is pulling along. It doesn't have anything to do with it. And then Lehmann's car, and then Green has accomplished his purpose, and as he told you, he didn't want to have any bloodshed or something, and so he gives the magic command, "Let him go, boys!" The crowd opens up, the car drives off.

Who is calling the tune, who is the puppeteer with all of the strings who is telling everybody what to do? What happens when the government truck comes by on the levee, hauling some equipment and the men mill around that; and there is even, as Mr. Holcomb testified, an expression,

1484 "This is the truck we want to get" or something like that, or "the car."

And all of a sudden a man runs over and says, after five minutes, they are all milling around, stampeding, says "Let her go!" the crowd opens up like a Red Sea, and the

car goes through. Who is calling the tune out there? Not only after he got there but before, who sent them out there? Who appoints all of the stewards and who O.K.'s all of the foremen that were passing out this apparently spontaneous information? "Oh, well, there is an unfair job out at the Chain of Rocks!"

Ladies and Gentlemen, these men aren't all in one factory, they are spread all over a Tri-City area. By some magic they all get in their automobiles, progress down to a designated, let us call it a "staging area", and they get the command, and some of our witnesses told you that Green said, "Out to the Chain of Rocks, boys!", or "Let's go, and don't pay any attention to the sheriffs," and out they go.

And as Turner says, Green is in the first bunch of cars to arrive. Holcomb's truck comes along, and a man
1485 runs over and says, "Let it go!" He accomplishes his purpose with force and violence as far as Terry goes, he has got the job shut down, Voyles is gone, and he says, "O. K., let him go!"

There were some words there, as Mr. Lehmann testified who was standing there seeing it all, about somebody says, "We ought to throw his car into the canal," and then people kicking at it and everything else as it drove off, and he gets up to the bridge and his bodyguard follows, the sheriff has to get him out, but who is calling the tune out there, giving the orders and directions? You can't, ladies and gentlemen, if this was the fact, and I suggest there is a great deal more evidence, if you are the boss of the men and they are under your control and you appoint the corporals and the sergeants and the lieutenants who control them and the stewards and the foremen and you are the boss of an organization and a powerful man, the business representative of this union, and there is a huge mob milling around your hall where you are having a meeting

as he told Mr. Lauer and tells them about what is going on at the levee, tells them about this unfair job, and
1486 then say to them—and all he said, and I submit he said much more, but let's take his evidence, "Well, I don't want any trouble out there", you cannot avoid criminal responsibility in America by manufacturing a situation, by igniting the fuse, and then when the dynamite goes off, blame the manufacturer of the dynamite.

If you start a reaction in effect, a chain reaction, you cannot be heard later to come in and say, "Well, I told them I did not want to have any trouble." Isn't that what Green says? Isn't that his only defense? "I saw them all milling around, I moved around them, there was a lot of them down there, and I said, 'Boys, I don't want to have any trouble'!"

The Government case, of course, is he said a lot more, he said, "Out to the Chain of Rocks. Don't pay any attention to the sheriffs, let's go, there is an unfair job across the river, take your scabby labor down off both sides of the river, and if you come back, et cetera".

Even if he said, "I don't want any trouble out there," he is the one that got them all down to the meeting
1487 hall. You cannot walk around between them, and you know they are going out some place, manufacture a situation, create a Frankenstein and then say later you did not do it.

Green, the evidence I submit, knew from the 26th of March what was going to happen if things did not go his way, and he did not need to make a very long report to his union, he just said, "There is some unfair labor out there," or "practices on the levee", and he left it at that. There wasn't any negotiations with Terry going on. He just told Wright—Wright said, "I am going to pull out if that is the way it is." That is on the 9th of April.

And the 13th of April he has ample warning that Terry is out there, drives out and sees him, he knows the sheriff is out there and everything else, and it is a test of his power, and Green reacts the way dictators from time immemorial have acted, with force and violence. And he goes back to his hall, the word is passed, and I submit that he passed it, he told Lauer he was having a meeting. Barton says
1488 Skeen told him, "We are having a meeting." Lauer says that Green says, "Knock them off the payroll for two hours. We got a meeting, we got a job to do." I'll say they had a job to do, force and violence in this show of force, and they got down to the hall and they got assembled, and out they went in military array.

Take a look at those pictures, there were cars parked in tandem along that levee, a nine-mile stretch, and they knew exactly where to go.

Gentlemen and ladies, in England, a gentleman wrote a book on power. I think his name was Lord Acton, and after a study of the situation, a good deal of research, he came to the conclusion, and pronounced his maxim which is that power corrupts an absolutely power absolutely, and if that phrase ever fitted a man better than Jack Green, I don't know of it because Jack Green became powerful down there and he became probably one of the most powerful men in Madison county. He can send the chief law enforcement officials back and forth and puppet for him to do his bidding, to get Terry across the river. And with that
1489 power he has been corrupted absolutely, and we submit that the corruption that has come in with the power that Jack Green had down there is so corrupt that in exercising it he came into conflict with the Federal Racketeering Act.

A great Judge of our United States Supreme Court, now dead, made a statement once that the law must keep his promises—Oliver Wendell Holmes—and the promise of

the law is that power corrupts you so completely that you marshal men in force and violence and threaten more force and violence to achieve your ends, whatever the ends be, that you run into the statute, and you are guilty of a crime.

And we submit that is the case in this instance.

Thank you very much.

The Court: You may proceed, Mr. O'Neill.

Mr. O'Neill: Does that complete the statement for the Government?

1490 And Thereupon Mr. O'Neill Addressed the Jury in Argument on Behalf of the Defendants, as Follows:

Mr. O'Neill: May it please the Court—

The Court: Mr. O'Neill.

Mr. O'Neill: —and you gentlemen for the Government, and ladies and gentlemen of this jury:

If I really thought Bob Oxtoby meant what he said and knew what he was talking about, I would be a little bit ashamed to be coming up here today from Madison county and talking to you folks because I would be hanging my head. We are not any different down in Madison county than you people are up here; and I take rather seriously and rather sadly the remarks of this very eager young man here today. I do it because I kind of feel that he has affronted the good people of Madison county, and I feel a little sad because I think he has misinterpeted his position and his duty as an Assistant United States Attorney representing the Government of this great country of ours.

We came up here in good faith, and we are still 1491 here in good faith. From Madison county—most of the men involved in Local 397 live in Madison county; as a matter of fact, I think all of them, all of the men who are members of Local 397, are defendants in this lawsuit, just as Jack Green is.

It is true they have not been called names like "Colossus" and "dictator" and "Tsar" and "a powerful man who is

running Madison county and being guilty of corruption and of overweening arrogance, of being an executive general in an army bent on destruction of people," a most unusual array of epithets to apply in a court of law where we as citizens are gathered to pass on a rather complicated situation, ladies and gentlemen, to consider certain events that happened on the 26th of March and on the 13th of April, 1953, and to consider whether or not those events come under the application of what is known as the Hobbs Anti-Racketeering Act.

Reasonably, I could not come to an unhurried and certainly an unangry conclusion after listening to the talk
Mr. Oxtoby just made. That is his privilege as counsel
1492 for the Government in arguing this matter to you, of saying what is in his heart; but I would rather consider this case from a reasonable standpoint.

Let's talk for a minute about what the background of this case is. I told you in our opening remarks what it was, and I just want to review it for about one minute or two with you.

There is a law in the United States known as the Hobbs Anti-Racketeering Act which says that any person who interferes with the flow of interstate commerce by extortion or robbery or by the threats of extortion or robbery to be brought about by force and violence or the threats of force and violence, is guilty of a crime.

Now under our Constitution, ladies and gentlemen, a crime is a rather serious affair. The Constitution of the United States is so serious about when a citizen, a free man in this country is accused of a crime, that the Constitution and the law and the courts tell you that until that man's guilt is proved beyond a reasonable doubt that he is presumed to be innocent.

1493 And that anybody that charges him with that crime must come in here, or must come before a jury of his

fellow citizens and make that proof beyond a reasonable doubt.

Now these defendants—these one hundred and fifty-six or one hundred and sixty members of Local 397 and Jack Green are here today, accused of a crime, the crime of attempting to extort money from A. W. Terry, Jr., by threats of force and violence.

Mr. Oxtoby says the crime was never accomplished, but it was threatened, and they are also accused of attempting to extort money from Ralph Wright, Jr., who was doing business at the Midway Excavating Company by threats of force and violence, and they have saved one other count in the indictment out of the nine counts now—only four now are being presented for your consideration.

The fourth count charges that they attempted to extort money from Ralph Wright, Jr., by threatening his employe Frank Luhning and they are charged with conspiring together, with entering into a thoughtful, deliberate
1494 criminal conspiracy to violate this law.

Now that is the background of this case. The law and the indictment are before you for your consideration, and you as jurors have listened very patiently, and I think with a great deal of intelligence and understanding, to the testimony of the witnesses who have appeared before you here. And at least to me—and perhaps I am a little stupid—this isn't anything simple—it isn't any flagrant matter that we can consider and reach a reasonable judgment about by applying to the parties the kind of names that Bob Oxtoby called the parties to this suit.

I think we have got to think about what the evidence was and what it shows, and we have and recognized in this country two kinds of law, not strictly the sort of thing that is written in a book perhaps, we have that kind of law that is, the law which includes the Hobbs Act; but in addition to that, in our daily lives with each other here

in the City of Quincy or in Alton or in Granite City we have uses and practices that never are written into the books, as neighbors, and as citizens we do things, we belong to civic organizations, we are careful about little kids crossing the streets, all those sort of things are laws—unwritten laws, they are part of our practices, uses, and customs.

It happens down in Madison county, which is a good deal different than some of the practices and some of the background that you folks up here in Adams county and this territory have, that we have what is known and recognized as a union territory, as union-organized, union-recognized, where the people recognize the existence of unions, of labor unions.

Of course, that is not unique in Madison county. The existence of labor unions has been as intimate and as usual a part of our American way of life as you or me, as the existence of churches or schools.

The Congress of the United States devotes a great many days and weeks and months every year considering enacting legislation to control the operations of unions and union labor. It is recognized as an integral part of our daily lives, and down there, practically everything is unionized. I mean if a job is done, it is practically always a union job because it is part of the community life. It is different up here. Practically all your jobs, I understand, are not that way. That is as you choose, that is as we choose down there. I merely give you that background to say that to you in my opinion it is no sin for us to live the way we do down in Madison county if we comply with the laws any more than we should consider it wrong for you to live the way you do up here in Quincy, and we don't.

Now as part of that unwritten law down there and growing out of our life together in the building of homes,

in the building of great industries, in the building of that tremendous project, the $44,000,000 Chain of Rocks canal project, we have all of these organized labor unions coming into that project to furnish labor, to furnish the man power that is necessary to [illegible] the work. And recognized, recognized by the Congress, recognized among themselves by agreements with each other, recognized by the community, at least the people that they deal with in the community by contracts that they enter into from 1497 year to year. All of that is in evidence here, or at least a background of a substantial enough portion of it so that you can know what it is all about.

If we have that sort of thing down there, so that if somebody from Missouri or Kentucky wants to come into Madison county and undertake a project, I would say it would only be the same kind of common sense for them to do what you might do as a contractor, for example, if you went across the river in Missouri to bid on a job over there. You wou[illegible] go over and find out what the labor conditions [illegible] the price of lumber was, all of the neces[illegible] re going to enter into the back- [illegible] are undertaking over in Mis-

[illegible] unreasonable about saying— [illegible] onable and there certainly isn't [illegible] e people in the communities down [illegible] e these practices; to abide by them, and get along with each other under the written [illegible] reements and these unwritten agreements that [illegible] s they have between each other.

Now that is so much for the situation down there. In attempting to bring about order, in attempting to bring about a legal, a set procedure so that men like A. W. Terry or Ralph Wright, Jr., coming into the territory will know what they are going to be confronted with when

they undertake a contract down there to employ union labor, the labor unions, all of them practically, the operators union in East St. Louis, the common laborers union in Granite City from year to year enter into contracts with whom? Well, the people that they are going to be mostly involved with, the contractors association, the people that are going to be the employers.

And they set up rules of employment, and in those rules of employment and the scale of wages that they fix in those contracts, they attempt to fix working conditions, what man is going to work on what job, what man is going to put the fixtures in the bathroom, what man is going to unload the piece of heavy machinery from the truck or break up the crate, all of those elements
1499 they attempt to define.

And when of course they cannot spell them down to the last minute, the unions themselves in an attempt to get rid of this scourge that exists in this country, that has been recognized by Congress and by our courts known as jurisdictional disputes, the unions themselves in attempting to get rid of that sort of scourge have entered into an agreement among themselves that when two unions get into conflict as to whether a fellow on the operator's job is doing the laborer's work or not, or a fellow that is a carpenter is doing the iron worker's job or not, when a dispute comes up, that dispute is ultimately referred to the International, and they have set up an arbitration committee to dispose of those disputes.

That is all orderly and legal procedure, ladies and gentlemen. There isn't anything about it that creates dictators. The unions themselves in an attempt to properly disperse their men, just take, for example, the little Local 397, the defendant in this case, under a series of constitutions and by-laws going down to the very
1500 local itself, provide for an organization, a form of

union government which is adopted by the union and agreed to by all of the members that are part of it, and part of that constitution creates the office of business agent.

If Jack Green is a tsar or a dictator, he is only a tsar or a dictator because the agreement that is entered into by all of the members of Local 397 makes him the business agent. He is no tsar or dictator any more than Schaefer O'Neill is or Arthur FitzGerald or any of you ladies and gentlemen of the jury is. He is a person delegated to a job, as he told you at one time, during the war operating in a liftle local like 397 with 156 members to allocate jobs that the war agencies and the industries demanded to the extent of some twenty-eight hundred men, that the industries in that area and the levee and canal project, even on the 13th of April, required the services of more than six hundred laborers, common laborers. That does not make him a tsar, ladies and gentlemen, and it does not make him a dictator.

When Bob Oxloby tells you that Jack is running 1501 that county down there, he is mistaken. He is not running that county down there any more than he is running Adams county up here. I will guarantee you a great deal less than ten percent of the people of Madison county know who Jack Green is.

Madison county has a population in excess of 175,000 people, and the idea a business agent of a little local like 175 is running that county is just as fantastic as some of the other ideas that Bob dreamed up in his remarks.

Now what happened and why is this case here?

Surely, ladies and gentlemen, I can say to you that reasonably and without the necessity of wasting much time that we could say to you, let's not even consider—let's not even talk about counts 2 and 4.

Count 2 charges that on the 26th of March Jack Green

and the Local 397 interfered with interstate commerce by means of extortion against Ralph Wright, Jr., and that extortion consisted of their demanding that he put on a swamper, a fictitious, unnecessary—and some other
1502 named laborer, in connection with the use of equipment that he had there. There isn't any denial of the facts in this case. We haven't any controversy about it.

Jack Green did go up to Frank Luhning on the 23d of March and said, "Who is your boss? Have him get in touch with me."

Was this a crime?

Why, that happens a hundred times or two hundred times a year in his job as business agent for that local. Certainly, that is not a crime.

And on the 26th of March, well, what intervened in between time. Let's take Jack Green's whole part in this thing in the Wright affair.

On the 24th of March—on the 23d of March or the 24th—Junior Wright called Jack up and said, "What do you want?"

And Jack said, "We want a laborer, we want our work on that job you are doing there."

And Junior Wright said, "I am not going to put a laborer on there, and if you interfere with me, I will
1503 call the F B I or take it to the National Labor Relations Board, NLRB.

On the 24th of March, Wright worked.

On the 25th of March, Wright worked.

Nothing was said to the union, there isn't any evidence here, and after all, ladies and gentlemen, this case must be considered on the evidence that has been presented to you.

On the 26th of March, four or five or six men were working either on the Masserman job or on another job adjacent to this job doing similar work, saw the operator for

Mr. Wright still continuing to work there, and went over to him and said, "We think you are doing our work. Would you quit operating your machine until we got the thing worked out?"

Now ladies and gentlemen, I don't think even Box Oxtoby can construe a threat out of that. He cannot construe force and violence out of it, or a threat of force and violence.

Nobody said to the operator, "We are going to knock your block off if you don't do it."

They said, just like anybody else would have said
1504 in Madison county if you had been a member of a labor union and found somebody in another labor union doing your work, if you were a carpenter and saw a painter sawing wood or you were a painter and saw a carpenter painting a house, say, "Lay off of that until we get the thing worked out between our unions."

They knew the ordinary and reasonable way to straighten these things out was for the business agents of the unions to sit down and talk those things out. Wright knew that, Luhning knew that.

Wright that same day went up to Jack Green's office and said, "Jack, I am not going to put a laborer on that job. If you make me put a laborer on that job, I am going to pull the equipment off of the job."

And Jack said, "That will be up to you, that is up to you."

Now Wright said, "Well, you can suit yourself."

Let's see, what did Bob say that Wright said?

"Well," he said, "that is the way it will have to be."

1505 Green's testimony is, "You can suit yourself."

Whichever statement was made, ladies and gentlemen, I submit to you that is not the sort of material or not the sort of a transaction that was contemplated in the Hobbs

Anti-Racketeering Act. That is not a threat of force and violence. That is not extortion. That is not any of the sort of crimes about which Bob Oxtoby has been talking here.

And I say reasonably, let's put out of our minds consideration of counts 2 and 4. I don't think that the Government pretends to think very much of the Wright case. If they do, Bob Oxtoby talked about five minutes about it, and fifty-five minutes about the Terry case.

So let's go to the Terry case.

What is the situation with reference to A. W. Terry?

You gentlemen and you ladies saw him on the stand, and you heard his testimony. He is a good-looking, handsome fellow. He would have sold me a bill of goods if it had not been for two or three things that he said.

1506 One was that he denied—he said he was going to make a test case out of this, he denied that.

Another was he denied he was going around there with a gun hanging out of his coat pocket.

Do you recall those two statements of his?

And he was asked about it specifically, and he was delivered to the enemy in this case by his own witness.

The government engineer saw him with the gun in his pocket after he had tried to get the engineer to take a gun. So he did carry a gun around there, and therefore he was not truthful to you about that.

And one of the deputy sheriffs said that he said to him, "I am going to make a test case out of that," and you can believe which one you want to about that.

Terry's situation reminds me of—well, last night or the night before last, my friend FitzGerald and I drove across the river to find a steak place that somebody had recommended. We never did find it, but on the way over

1507 and coming back, I noticed right across the bridge and out on a little peninsula of land a real, bright-

painted, red, white and blue stand, and in great big letters was the word "Fireworks!"

I am not unfamiliar with that because in St. Charles county, which is on the point of land between Missouri and point of Alton, they have a flock of those fireworks stands too. They stand from year to year, and every spring around the 4th of July they do a landoffice business. They do it because the laws of Missouri, or at least the laws of the county where they flourish, tolerates them, do not prohibit them. We in Illinois here have a law against the sale of fireworks. We have a law because the Legislature and our own local authorities believe it is good for the health and welfare of our kids. They believe it is good to keep our kids from the kind of danger that might split our kids' fingers open on the 4th of July and require you to bring them to the doctor quickly for an anti-tetanus shot. It is the law of the land of Illinois.

1508 What would you people in Quincy think if on the 3rd of July, talk about arrogance, one of the operators, let's say—let's not even call them arrogant—came over here across the point of Missouri and said, "Well, our business isn't very good here, competition is a little rough. Let's go over to Quincy. There is a nice square by the Lincoln-Douglas Hotel. They have a lot of nice squirrels, birds and trees around there, and put a fireworks stand up there."

"Well," son body says, "you might get into trouble with the local folks or local authorities about the thing."

"Oh, no, I won't. I am going out here in the county and hire a couple of special deputies and put some guns on them. They can be my bodyguards, and I will go over there and stand in that square, and I will sell all of the fireworks I want to the people in Quincy. Regardless of what the local law is, regardless of what the local customs are, I am going to make a test case out of whether or not they can keep me from selling fireworks in Quincy."

That might not fit the Terry case on all fours, but
1509 it comes pretty close to it, ladies and gentlemen.

Think about the background in Terry's case, think about it in terms of this business that they call conspiracy.

Conspiracy, you know, means people getting together and planning to do something wrong. Extortion means somebody with a deliberate intent in their minds of wrongdoing. There must be a criminal intent.

I am sure the court will instruct you in this case that Jack Green must have had a criminal intent when he understood what happened on the morning of April 13th, and that the members of Local 397 had a criminal intent. I don't think there is any evidence that anybody had any criminal intent on the 13th of April.

On the 26th of March Terry, who had been working on the levee for some time, was approached by four or five laborers, one of whom was a steward and one of whom under his duties, under the by-laws of the union, was supposed to call attention of the fellow, when he saw another union man doing what he thought was his work, to go up to him and say, "Buddy, that is my work.
1510 I am a laborer, that is laborer's work. You ought not to be doing that. How about laying off until we get the thing worked out between our unions?"

That is what happened to Mr. Terry on the 26th of March.

Now there are two versions of what followed, of what Mr. Oxtoby calls long period between the 26th of March and the 13th of April.

Mr. Green tells you that he tried to get hold of Terry after that was reported to him by calling the Terry Engineering Company out in St. Louis, and wasn't able to get hold of him.

Terry told you he tried to get Green time after time by calling him at home, at the office, but they refused to accept calls.

When I pinned him down on cross examination, or Mr. FitzGerald did, as to how many times he actually tried to get him, he said, "Well, maybe a couple of times."

He couldn't remember when and couldn't remember where.

1511 — But significantly, all of this time Mr. Terry was in constant communication with Ralph Wright, Sr., who was the business agent of Local 520 which is the operators union which furnished him drivers for his equipment. He didn't have any trouble getting Ralph Wright, Sr. and Ralph Wright, Sr. called Jack Green and they had some conversations which are in evidence here.

Now up until the 13th of April, ladies and gentlemen, that is the way the thing proceeded. Jack Green made a trip across the river to talk to the Government Engineers about assigning that work, about taking care of the situation the same as they did for our friend Wright. You remember he got mixed up a little bit on the witness stand about whether or not he had used any laborers on his job, and then when we showed him what the reports were, how the contracts fitted together, he said, "Oh, yes, I used laborer, but the Government paid for it."

In this situation Jack Green as business agent for his local went across the river and said to the Government Engineers, "How about it? We think we have got
1512 some laborers entitled to that job."

They didn't say to him, "No, you are not entitled to laborers."

They simply said, "We have simply let a contract to these contractors. That is a matter to work out between you, them and the contractors in your local."

I want to digress for just a second to dispel maybe some of Mr. Oxtoby's illusions about the powerful Colossus sitting in his office in Granite City, the big "I am" saying to everybody that came into the county, "You got to come and see me."

Now that is Bob Oxtoby's interpretation of that thing. In view of the evidence which has been presented here, ladies and gentlemen, I think it is a most unfair and unreasonable interpretation.

You have a job, or I have a job across the river over at Hannibal some place, to undertake some construction or to undertake levee repair, and we want to go over there and we want to hire laborers over there.

Where do we go? Go down on the street corner
1513 and hire them, holler for a laborer? Of course not.

You go to the office of the business agent of the laborers union, if there is a laborers union in Hannibal, and say, "Send me out two men on the job."

That is the way those things are normally and customarily handled. That is the way they ordinarily take place.

There isn't any iota of dictatorship about that sort of thing. That is reasonable, ordinary business practice. I say it is most unfair for Bob Oxtoby to try to interpret Jack Green's handling of those situations as evidence of dictatorship in Madison county.

Did our friend Terry make any effort, ladies and gentlemen, to work that kind of situation out?

Well, there is some conflict about it, I will admit that. Certainly not the kind of conflict that proves that Jack Green or Local 397 was guilty of extortion or robbery, robbery or violating the Hobbs Anti-Racketeering Act.

Terry says, and taking his testimony and his
1514 story in its own best light and as the truth, which I do not think it was, it still doesn't make a case of extortion, does not make a case of threats of force and violence.

Terry told you ladies and gentlemen, and it is not denied in this case, that at no time prior to the 13th of April was any threat made to him. Just remember that. That is

just as straight and simple as I can make it because it is just as straight and simple as Terry's testimony. Nobody threatened him. Nobody threatened to split his head open or shoot him or wreck his equipment. Nobody threatened to throw him in the river. There is no threat of violence, nothing to occasion fear, nothing that if a man had an honest purpose in his heart and felt like he was going to proceed in a fair and honorable manner, that he had anything to worry about at all.

What do you suppose it was that was gnawing in the back of A. W. Terry's mind that made him on Saturday or Sunday before the 13th of April go out into St. Louis county and pick up a couple of gun slingers?

1515 Now remember, my friends—remember that Oxtoby referred to one of these wrestlers on the stand as "Officer-this" and "Officer-that". Those guys weren't any more officers than I am. They were special deputies—one was—and the other was a special constable. They were wrestlers, and I haven't any bones to pick with the wrestling profession. I get a kick out of it on Saturday night on television, but they were gun slingers on this occasion, and they were armed bodyguards from the State of Missouri, not police officers, when they came into Illinois any more than a special deputy over at West Quincy would be a police officer here in Quincy, any more than he would have a right to come over here and tell you whether you could cross the street or whether you could feed the squirrels in your park.

1516 They were armed bodyguards coming into Madison County.

For what purpose?

Now up to right now, ladies and gentlemen, there wasn't any purpose because the fellow that hired them didn't have anything to be afraid of unless he had some dishonest purpose in his heart. Up to right now A. W. Terry had no

reason to hire bodyguards. I don't know what was in the back of his mind. I have got a suspicion, though.

I think he wanted to make a test case out of this situation. I think he wanted to see what he could do about breaking up the union, the union's usual customs and practices in Madison County.

But, regardless of that, that is just my own opinion. Actually, some things speak louder than words.

Here was a man who had not yet been threatened, hiring two bodyguards, and on Sunday going across the River to Madison County up to Edwardsville, from 10 or 15 miles right past the place he was going to work on Monday morning, and calling up Joe Kellerman, and you folks had
1517 a chance to see Joe Kellerman on the witness stand.

Joe Kellerman is a good police officer, I don't have to testify for him because I think your own judgment of the man and his character will suit me. He had been Chief Deputy in the office of the Sheriff of Madison County for a great many years, with the exception of all but four years, I think, in the last 20 or 24, and he knows the business of the Sheriff's office.

And our friend Terry and his two bodyguards drove up and said, "I have got a job down on the levee for the Government, and the Government wants me to finish it, and I am going to start working tomorrow morning, and I would like to have you send a Deputy down."

Kellerman said, "Well, do you expect any trouble?"

"Well," he said, "no, I don't expect any trouble; but the laborers have made a demand that I put a man on a piece of equipment and I would like to have a Deputy down there."

And Kellerman said, "O. K., we will send a Deputy down there. You are from Missouri and we want to give
1518 you the full benefit of whatever you want in Madison County. We will send a Deputy down there."

And he called up Jack Fricker, said, "Go up on the levee tomorrow morning because there is going to be a contract to start there. We don't want any trouble," or words to that effect.

I said to Jack Kellerman, "Did he tell you these two fellows he had with him were going to be bodyguards with guns down there?"

He said, "I told them as Special Deputy and Constables they had no authority on this side of the River."

I said, "Did they say anything about going over there armed?"

And he said, "Of course not."

I will warrant you if they had said anything about coming over there armed, that Joe Kellerman would have said, "You had better not come over there armed. This is police territory in Madison County."

Now right up to now, up until the 12th of April and through the 12th of April, ladies and gentlemen, no threats have been made against Terry, and Local 397, and Jack Green did not have any idea up to that time that our
1519 friend Terry was going to come back across the River.

So they certainly couldn't have been conspiring against him up to that time. They certainly couldn't have been conspiring against him to extort money up to that time. They certainly could not have been threatening to keep him from doing his work so they would interfere with interstate commerce up to that time.

Up to that time this thing was a sleeping firecracker in the woodshed, and the fuse had not been lit.

On Monday morning, the 13th of April, Mr. Terry lit that fuse.

For what purpose did he have in calling up at seven o'clock in the morning and saying to the financial secretary of the union, Charlie Parker, "Is Jack Green there?"

"No."

"Well, tell him I am going over to work on the levee and I am not going to use a laborer."

Well, ladies and gentlemen, if you were in Terry's position, and you wanted to just go about your business quietly, and you felt you were in the right, would you be going
1520 down and walking up in front of the guy you were going to choose with a chip on your shoulder, and say, "Well, now, knock the chip off," or would you, like an ordinary and respectable business citizen, go about your business and do it?

What was Terry doing? He was looking for trouble, and he wanted to make sure Jack Green got the message, so when he got across the River he called him again from the restaurant and he said, "I'm going to work down here on the levee today. I am not going to use a laborer. What are you going to do about it? Are you going to come up here?"

And Jack Green said, "You bet your life I'm coming up there."

Now up to this time there isn't a bit of evidence in this case, ladies and gentlemen, that there wasn't anything out of the ordinary contemplated about this situation, and Green got up there in his automobile by himself to talk to Terry. When he got up there, he found Jack Fricker.

Fricker said to him, "Those guys are up on the levee and he has got two armed bodyguards with
1521 him."

I don't know what you would have done. I know what I would have done if I had been a business agent. Going up to talk to a man reasonably about whether he ought or ought not to have a laborer on that job that morning, and I found out he had two armed bodyguards from Missouri on that job. I wouldn't have gone up and talked to him. I don't like men with guns.

I would have done what Jack Green did. I would have

gone back there and got my Executive Committee. That is what he started back to do.

Right up to now, ladies and gentlemen, we have had Local 397 operating in Madison County for all of the years that we can remember, and we have never had a picket line. So far as I know there has never been a shooting or a killing. We don't settle labor matters down in Madison County that way, with guns.

Terry kept on working. He said up there on that levee, perched up there, that is where the word "arrogant" fits him. He perched up there on that levee, arrogantly, with two gunmen.

He had a gun of his own, too. He had an armed
1522 Deputy Sheriff out there, who was out there for a different purpose than Terry was, he was out there to keep the peace.

And things began to look hot.

And Jack Fricker called Joe Kellerman and said, "This thing looks like it might get bigger than I can handle by myself, and you had better send some more men out there."

And so Joe Kellerman sent Muso out and "Rip" Turner out, and you heard "Rip" Turner yesterday.

When Jim Callahan came in, he said, "Let's go down and see what is going on down on this job."

Jack Green had gone back to headquarters, and as business agent he is the personal contact man with all of the guys in his union. He is the—well, not the Little Father, but he is their agent in all of their contacts where they get assigned to work, whether they work or not, all of those things, by the rules of the union, a perfectly legitimate setup, he is the fellow who controls it.

So when Jack walked in, they had known he had
1523 been up to the levee to work out that deal with Terry that morning, that he had been called up there, challenged to come up there, they said, "What happened?"

And he said to them, "Well, I found Terry up there with a couple of gunmen." I can just imagine what would happen.

Mr. Terry had lit the fuse on that dynamite that Mr. Oxtoby was talking about.

You know, the working man, just like the other citizens of Madison County, aren't any different than any other ordinary every-day Americans. If they feel their rights are challenged by trespassers, by gunmen, by people who are doing things illegally or wrongfully, they get an itch to do something about it.

They don't have to conspire—you don't have to organize a conspiracy to get a bunch of American people who have been bred in Freedom, who have learned for a hundred years to fight for their rights, to do something about it when they feel that those rights are trespassed.

And these gunmen were trespassers up there that morning, and Terry, who is the complaining witness here, 1524 was the fellow who brought them across the River.

Talk about people being in this court with clean hands! If it had not been for Jack Green that morning, ladies and gentlemen, they might have been bloody hands. Not because of the conspiracy, not because of a desire to interfere with interstate commerce, but because gunmen had been brought across the River from Missouri.

What about the man that Mr. Oxtoby called a "Colossus," "steeped in corruption," "a man of over-weening arrogance, a man who is a Czar," and he said, "a Dictator, a powerful man in Madison County"?

He saw these fellows streaming out to that job site. He could not have stopped them anymore than I could have stopped them that morning, or any one of you. They were free agents to do there what they pleased, except when it came to being assigned to a job working under the rules of the union, and they lit out for the levee.

And when I said that the words about the gunmen up on the levee spread like wildfire, I leave it to your
1525 own judgment from the stories you have heard on the stand here as to whether or not that is just what happened.

Now I am not going to take issue with my friend Bob about whether Jack Green was the first man out on that levee. You heard the testimony of four or five respectable, decent, everyday, law-abiding law enforcement officers down in Madison County.

"Rip" Turner's impression is Jack Green was in the first group that got out there. But there has been all kinds of testimony as to when he got there, when they were all there, whether there were two or three hundred there, or whether there were fifty there when he got there.

But he came out by himself over a back road to meet the crowd out there because, as he got to thinking about the thing in headquarters in Granite City, he realized these two armed gunmen, gun slingers, as he called them, were out there, and maybe some of his boys might get hurt. And he lit right back up on the levee there and when he got out there the first thing he said when he met Jim Callahan, "I am glad you are here."

Does that look like the thought or spirit of a man
1526 that is conspiring to wreck the law? Of course not.

"I'm glad you're here."

And as he said that, as he told you, and as these fellows said, the fellows that the Government put on as their witnesses said, when Jack said, "Get out, don't get yourself in any trouble if you go out on that levee job," and he came out to that levee job, ladies and gentlemen, and talked to the Sheriff and the Sheriff had previously talked to Terry, and had seen what was accumulating there, he saw that stick of dynamite with the fuse lit, that fuse which was those men that had come streaming out there, not

because of a conspiracy but because they had been deliberately, and by deliberate design, goaded to come out there, and he saw that and he said, "You guys, you fellows, have got a legal proposition, some technicality. How about working it out?" "You get your stick of dynamite on the other side of the River, take those fellows across the River."

He said to Green, "Is that all right with you?" Green said, "It is all right with me, but I'm not going to ask him to go because I didn't ask him to come over
1527 here."

And he left.

Sure, there has been some testimony about some scuffle in there. I am sure Bob did not deliberately mean to say that Jack Green took a swing at anybody because he can't recall in his notes of testimony a single person who said Jack Green swung at anybody.

Jack Green told you he stopped a guy reaching for Terry. That is the only witness who said Jack ever made a move except lose his temper, and any other red-blooded person would when a man brought gun slingers across the River that would threaten him or threaten his workers.

He may have called him a few names. He doesn't deny it. And he told him to get his gun slingers back across the River.

Now that is the story of what happened. They left.

There is a lot of stuff in here that is complicated, and my friend, Mr. FitzGerald, is going to talk to you about them, the business of these contracts, the business of whether or not in the few and incidental demands
1528 that have been made along the line whether or not these people were entitled to ask for that.

They thought they were entitled in good faith, and so forth, and I am sure Mr. FitzGerald will adequately cover all of that.

But I want to leave this thought with you ladies and gentlemen: This is the United States of America still, and the man who comes under our laws, and sometimes some of us come under more complex ones than others, because we happen to be in certain lines of activity, a union leader is one of those kind of individuals, a man still has his right, under the law, to come into a court room like this before twelve of his fellow citizens and ask the Government, or any other person who seeks to prosecute him, to prove his guilt beyond a reasonable doubt.

I say that there has been no guilt proven here against Jack Green, much less any guilt beyond a reasonable doubt.

I thank you.

The Court: I think we will take a recess for ten minutes.

(Whereupon the jury retired.)

The Court: Defense may proceed.

1529 Argument on Behalf of the Defendants by Mr. FitzGerald.

Mr. FitzGerald: May it please the Court.

The Court: Mr. FitzGerald.

Mr. FitzGerald: Ladies and gentlemen: I hope these lawyers didn't give the gentleman who is coughing that cough. I hope I don't now. I started out to talk to the jury—I haven't the slightest idea of what I am going to say. Before I finish, you will agree with me.

I do feel there are certain things, which because perhaps of experience, might be helpful.

It is my hope that I may be able in some manner to help straighten out difficulties in our thinking because of the fact I am sure no one here—I am sure I am not able—will be able to remember all of the things that have been said.

Young lady, I wonder if it would be too much trouble

for you to pull that rope and let's get that chain down farther?

It kind of hits my eyes, and you won't know until
1530 you get to be 102 and 2/10's but you have to look after your eyes, and that is not an exaggeration because I have been doing this sort of thing for 52 years.

That is compositely longer and older than all parceled together.

In this case, ladies and gentlemen, I think we start with one primary thought which should be, it seems to me, a fact to guide us throughout the case. This law provides—this is essential—I think his Honor will give you definitions of these two terms.

The Hobbs Act came into existence long after the Wagner Act which was really the first intelligent labor act that was passed. Senator Wagner of New York sponsored it. Since that time there have been various acts, the Norris-LaGuardia Act, and finally the Taft-Hartley Act.

Now all of those things were enacted for the purpose of preventing the absurd conditions that existed for many years in the United States with reference to employers and employees.

I represent a great many employers, I know their attitude generally. I know the attitude of labor. It has been
1531 my happiness in life not to be a partisan, and I have endeavored to preserve that perspective viewpoint which the honest reporter for his newspaper should preserve, and which fortunately Mr. Haley has done with reference to this case. He is a factual person.

Now I want to look at this case factually. I have no desire to criticize Mr. Terry, nor any desire, and I shall not, to criticize Mr. Wright. I want to examine this case.

The Hobbs Act was passed for one purpose—this is under the so-called Hobbs Act, and it provides that anyone, by extortion, and that is the word, ladies and gentlemen,

which none of us need to have a more concise definition than the word itself conveys to our minds.

Robbery, it says, shall interfere in some labor situation with interstate commerce, and extortion and robbery are both defined in the statute.

Now this law was passed to prevent the rotten situation that so often exists in labor. Now I believe the labor union has done an inestimable good, while I believe—I still know and do know that there are a lot of people in labor
1532 who have done disgraceful things which have been injurious to them and injurious to all of us. But this is not a hold-up case, this is not a case where any man says, "You pay me $5,000 or else!"

This is not a case where a man says, "Unless you do certain things, I will see that you get laborers who will sabotage the work project."

There is nothing like that in this case.

The only thing that has been relied upon in this case for this conviction of this union and the conviction of this defendant, Jack Green, is the fact that on April 13, 1953, a group of men, a large number, congregated out on the levee.

Now I want to talk a little more, before I proceed in the analysis of the testimony—and I won't attempt, ladies and gentlemen, to go over it all because it would be impossible to give you the detail of each witness' testimony, these people who went out on that levee on that day did what?

They did the thing that you have read in the news-
1533 papers as being done every day in America. They had gone out there because there was a labor difficulty, and there can be no question in this case about that.

Marks Alexander, whom I respect, and by the way, this is his home, Marks Alexander and I have had much experience on opposite sides usually, but I like him. I have

great admiration for him and his ability to me is outstanding.

But Marks and Oxtoby, will argue in the same tenor, the things that Bob Oxtoby argued, that is, that they had no right, that the mere presence of those men out there was a threat, and that is the reason for the stoppage of this work.

Well, certainly, if that is a common practice in the United States, the Hobbs Act was not enacted to stop that. It is conceded that there is a remedy.

Sheriff Callahan was right when he told Terry that this is a question which he could settle. Callahan made the mistake that it was in the courts. It is in the labor courts, if there is any wrong being done you, you don't need any gunmen. He did not say that. This is the thought back of it:

1534 You don't have to go to the F. B. I. You don't have to bring these men in there. Any man who carries a gun, any man who displays that gun, does what? He invites his own death.

And a person who ever draws a gun on another, who doesn't shoot first, is certainly—and every person who is authorized to carry a gun will tell you—and certainly all of the police officers in the world know it, because it is an invitation to tragedy.

Now do you suppose it was in the minds of Congress, and remember Congressmen are men, jurors, courts, lawyers, are just the same, there isn't any difference, those men may have more ability than some of us, they have undoubtedly a different experience than we are able during our lives maybe to have, but after all, they are men.

They would not enact a law saying that you have no right to extort money or property by force—if this was picketed—I don't think it was—it was a voluntary going out of these people because they heard what?

They heard that there were armed guards gunmen,
1535 out there, whether you call them "bodyguards" or "goons" or whatever you call them—I don't like the word "goon."

Now, if picketing—there isn't much question about picketing, the courts over the years have attempted to define the extent to which picketing may be reasonable. Some absurd decisions have been made, but I think the concensus of opinion and the general weight of authority of the United States is that any picketing, whether for the purpose of determining whether it is peaceful or whether it is threatening picketing, depends upon force and violence, and that is the essence of it.

There was none of that here. There couldn't be any question about it, and you know that there wasn't any there from the testimony, not only of various witnesses but from just what was the testimony of Mr. Terry.

And I want to demonstrate to you, because it is essential in order that we analyze and understand the various—the very premise and very foundation upon which this entire case is based—

Mr. Terry tells you—I don't know what was in
1536 his mind—I haven't any notion about it—you recall we wanted to show, and the Court did not permit us to show, that they had made a profit on it. It is natural to assume that they did, or they wouldn't have taken the contract. They employed laborers.

Now for some reason or other that I cannot in my mind ever determine what the reason is, Mr. Terry did not want to do that.

Now it couldn't have been the cost of the employment of labor. He didn't have to keep a laborer any more than four hours any day, that is the minimum hour allowance, all unions do that. They have a minimum period of work when a laborer is called.

Any laborer with a union that is affiliated with the A. F. of L. does. Four hours in one day, and if there was no work and they needed not to have him for another day or two days or three days, they need not have him.

Now if that is so, it could not be the cost of the labor. That it was not the cost of the labor is shown by so many indications, that Mr. Terry himself discloses.

1537 First, the first person he went to was the F. B. I. He doesn't remember exactly the date, but it was in March. This is his evidence:

Afterwards, on Friday, you remember he went out there on Monday, the 13th of April, Sunday would be the 12th, Saturday the 11th, Friday would have been the 10th of April, four days before or three, perhaps more accurately, he does what? He goes to a police officer in St. Louis and says he wants some bodyguards.

Now I want you to realize just what was said to Mr. Florence whom he first saw. He said he had been threatened. This is the testimony of Florence in this case. And that is why he wanted protection, and he wanted Mr. Florence—he asked him if he could get another man, and he told him he could get Mr. Zinn, and he got them.

I think he talked to them both after Florence had gotten Zinn, he talked to Florence on Friday and he talked to them both on Saturday and made arrangements for them to go with him over on Sunday.

Now some of them said that they had told Mr. Kellerman when they met him on the steps of the court

1538 house in Edwardsville that they would come over armed. They told him they were Deputies, a Deputy Sheriff, one of them I believe said, and the other a Deputy Constable, as I understand it. Both of them, I think, spent most of their time, however, as Assistant Sheriffs or Assistants to the Sheriff, and to the Constable.

They said they had told him that, or Terry said, I forget which, they told him they would be armed.

But there isn't any evidence at all that Mr. Terry told them to come over with a gun.

The next day they did come. Now we have the situation, the first notion that Mr. Terry had, and I think the name of the man that was employed by him was a man by the name of Clinton—I may be mistaken in his name—was that on the 23rd of March his machinery was interrupted in its operation.

He knew then that the union in Granite City wanted, and perhaps demanded, that a laborer be put upon that job.

Now in March there are 31 days, that leaves eight days more in March. During that time he called on the 1539 F. B. I., you will recall, and this is Mr. Terry's evidence, but he did nothing at any time from the 23rd of March until the 12th of April, according to his evidence, twelve days in April and eight days in March or twenty days altogether, to get ahold of Jack Green.

Now the Government—and I don't quite justify their position in this matter—says it was the duty of Green to go to them. I don't know why. Green was not running the equipment there. Terry had a contract with the Government and he agreed that he would run it.

He knew, and he says he knew, that in that area it was the practice to have laborers with this equipment. Of course, he does say that Green told him he would have to have a laborer with every piece of equipment. I am sure that the evidence doesn't substantiate that.

I am sure, from people who have no interest in this matter, you must be convinced that is not true. That Green would sit there in his office and require Terry to have a man with every piece of equipment when he would let Mr. Longfellow have one with four pieces, does it

1540 make sense? Is it of that kind of substance which we may accept and rely upon? Is it the kind of proof that proves a conspiracy to violate this statute?

And it is practically throughout Mr. Oxtoby's argument to you the basis upon which he asks a conviction in this case.

It seems to me that it is not.

Now if Mr. Terry was perturbed and concerned about the danger up there that day, he could have found out from every man who had worked for him during the entire period since he started, sometime, according to his evidence, in the last part of February up to the 13th of April, a period of all of the month of March and up to the 13th of April, and they are in the middle of the month, that there had been no men out there although he had nothing that employed a laborer.

What brought these men out there?

I want you to answer it in your own analysis of this picture. You haven't any interest in it. You are detached. You are not taking sides. Stand off there and get this all focussed in your thinking, and if you do, you will know that by the very presence, and the grapevine which 1541 spreads like wildfire among those who are interested and concerned in a particular situation, that there were gunmen out there, and that is why these people went out.

There wasn't any concerted effort. There isn't in that fact. And they are going to talk about circumstantial evidence in the establishment of a conviction.

These men almost went spontaneously when they found out, and they couldn't tell you. Why, the first 21 witnesses the Government put on, and they vouched for their truth, these are the Government witnesses, I will tell you their names, they all said they could tell why they were going out there.

There were 21 Government witnesses (reciting the names of the 21 Government witnesses) that said they had not been told by anybody to go out. They saw the crowd going out. Why? Why, it spread among them, they were members of the unions, labor unions, not all from 397, but other labor unions in the area.

They heard that these men with guns were there. This
whole thing arose—it was inviting—the stage was
1542 set and the scenery in the shape of these men with
their holsters. They were big fellows who were out there. They were the type of men who were good bodyguards.

But why have bodyguards when there had been no trouble there? Not the slightest evidence is in this record of anything wrong prior to that morning.

They had asked the Sheriff to have a Deputy out there. Mr. Fricker was there. He became alarmed.

Now there weren't men out there when he telephoned to Kellerman, the Deputy Sheriff, and said, "I fear trouble." He had the same reaction that I have attempted now to explain to you. He realized that the presence of these armed men from Missouri coming up there, Terry telephoning first to Charlie Parker, and Charlie after seven o'clock and about five minutes to eight, to Terry, asking him—no, not asking him—daring him out, "Are you coming out?"

By everything he had done he had invited trouble.

Mr. Green tells you he went for one reason, that
1543 these men were going. He had been out there and
he saw the situation. He didn't go up and start any riot. He was smart not to. He should not have gone. I would not have gone where men were armed and waiting for me. I don't think any sensible person would or should.

He went back. Then men congregated around there. They

learned from Fricker that there were men there with guns. Every morning this hall, as the evidence shows, these fellows who worked in that area, and did this work in this wonderful, very, very highly industrialized area in the State of Illinois, perhaps as much so as anywhere in the United States, the evidence in this case shows that while this union has been in the neighborhood of 150 to 170 members, that is as an average, and at times it has had as high as 2200 members employed, one time during the war, perhaps you will remember that.

But of course, if there were 2200 members employed, 2,000 of them were not members of this union, that they would have you find guilty of a conspiracy to interfere with interstate commerce. Certainly, the 2-20th or 1-10th of 1544 these people, these members, can alone be guilty. I wonder why? I wonder why the other unions involved—

Do you suppose the diligent efforts of the F.B.I. could not have ascertained the names and numbers of each of those, those people working at Dow Chemical or at Granite City Steel or at the other places where work was being done, a greater number at each of those places than the entire membership of Local 397? Why, certainly they could have done so.

Somebody had an idea that this case was to be a test case, and I think that originated in the mind of Mr. Terry.

Now, he said Jack Green did not try to get ahold of Terry. Why?

Well, let's get the picture. Ralph Wright, Sr. was the agent, the business agent of the Engineers Union No. 520. His son was the president of the Midway or Mid-State Excavating Company. I don't know what it is called exactly.

Jack Green testified that, and there is no denial of it, that he had been talking with him and Mr. Wright, Sr. had

told him that he was talking to his son to see if he
1545 could not get this thing settled.

Mr. Terry said that he also had been talking to Ralph Wright, Sr. There is no reason—there is no sense as to why, if there were an intention on the part of Local 397, the local union which is the defendant in this case, and Jack Green, too, by threats and by intimidation to force a laborer upon Mr. Terry and Mr. Ralph Wright, Jr., they did not do it during the entire month of March.

You remember Wright began working in January, Terry in the last of February, as I recall the evidence. Ralph Wright had been working there and nothing was said to him. Why?

It was the duty of the business agent, Green, if his men should have been employed, to have seen to it, under the Constitution which has been read to you, and under the By-Laws of the local union, the Constitution of the American Federation of Labor, that is a part of the duty of the business agent.

Do you suppose he would have waited if there weren't a reason? Why did he wait? Why? Because it was a matter
that should have been settled between the business
1546 representative of the Operating Engineers Union of which Mr. Wright was the business agent and this union.

That is why Callahan told Terry that. There can be no question about it.

Now I will just go back to the thing that is confronting us. Let's see. I give you this picture and you perhaps will see, it may not be chronologically sensible to do it the way I am doing it, but with my haphazard kind of reasoning, if it can be called "reasoning," I probably floundered around.

As I say, extortion or robbery, there isn't anything like that in this, there is no money involved in this. This is not a hold-up. There wasn't anything like that.

Second, which interferes with interstate commerce. Now, let's see this.

This evidence shows, and the pictures I think disclose also, there has always been a levee along the place where Terry and Wright were working. It was operated by the oldest situated Levee District. This is a higher levee and closer to the canal, but you will remember when Mr. Gleason testified, I asked him, and I think I remember his answer, I think I remember from my notes identically what he said, I asked him if anything in erosion or washout that was there at that time would interfere along the places where Terry and Wright were working with the interruption at any time of boat traffic through that canal, and he said it would not.

1547

Now, they must prove that this is an interference with interstate commerce. How could it be? Why, certainly the levees are necessary, all the levees are necessary.

Mr. Gleason also said it is there to protect the overflow so that the industry and the farmers and the people who have homes down in that valley beyond, just as the old levee did, although it is a higher levee, also this levee in times of flood, will protect that canal. There wasn't any flood then.

This is no more interference with interstate commerce than it would be if a railroad over on the other side of the levee, on the east side, were overflowed at the time of flood, or an industry over on the east side were flooded out, or a house had been flooded.

1548

Supposing the entire transaction took place on the railroad or that it took place in the yard of one of the people who owned a house or it took place in a bakery and it is over there, which sells the bread and makes bread and rolls for Granite City, or suppose any other thing that you want, suppose that an automobile was driving from Illinois to Missouri and it was interfered with by these people who had congregated. Would it be an interference with commerce?

Yet in times of flood that would occur. And the only reason—not the only reason, but one of the reasons—there are two reasons—first, to prevent erosion of this silt that would ordinarily be on the side of this canal into the canal which would occur in times of heavy rains, that was not the situation when this incident occurred. And primarily to protect the property over and beyond and away from where the Government had its canal.

Now there is down there a Government agency—there isn't anything in the world that nobody knows just how hard—there never has been any way by which any-
1549 body could foretell just what is going to happen to a levee. I have watched it up in a town several times. Nobody knows anything about what is going to happen to a levee.

Now it is a cinch, it is a cinch that when this incident happened there was no interference with interstate commerce, and that is one of the essential elements of this case.

First, that these people by threats and violence, extorted and robbed, and how did they get the extortion and robbery? They get to it by saying "We were going to force." What time did I start, do you remember? I have talked longer than I should.

I have got to talk more because I have a thought or two.

Threats and extortions, let's see what occurred out there that day. They say we were trying to compel the employment of a man unneeded, and unwanted, and because the man did not want it, with his permission because of those threats made by us. That is force which had been exerted.

As I have said to you before, this is nothing at all except a gathering of union men because of a labor
1550 difficulty which is occurring now and which is occurring practically every minute of the day in the United States, and I never have heard of a case of this nature growing out of this law.

Thank God that those men who are hold-up men, who are grabbers, who are grafters, who are thieves, are being caught. They are the greatest menace to labor in the world and to the employer.

What are the threats? Certainly there weren't any about Ralph Wright, not possibly. There cannot be any threats in anything that occurred so far as he is concerned. His father knew the situation. His father, so Jack Green says, was trying to straighten it out with his son.

His son was a member of that union. Terry is a member of that union. That Constitution applies to that union of 397 in Granite City. They ignored it. All right.

Were either of them afraid? Were they put in fear by any force, by any threats? Was Terry put in fear up there on that levee?

Well, let's see what happened. Green never talked to them. Callahan was the intermediary between them, the liaison officer.

1551 He went back and forth. He talked to Green.

After it was all over, Green told him to get—I could amplify it—I am afraid to, I think the Court will call me down, so I will keep my mouth shut.

Anyway, I don't know what you would do if some fellow came over—let's keep in mind Green hasn't any power to tell these men to leave their jobs unless they were under the union rules required to attend a meeting. He told this man Lauer down at one of the plants that he had called a meeting because there had been some trouble there about labor and about the other people who were employed there, and he was afraid.

You remember, the employer hires and the employer fires and he has a right to fire if a person leaves employment or does not properly perform his work.

No union arrangement in the world can ever justify that sort of conduct. Green feared that unless he told the man

that they were wanted at a meeting at the hall, they would all be fired, which he did not want to happen.

1552 I want to go back to the fear Terry was in when these men came out there, that was at the time—there never was any time when his bodyguards were not there, there never was any time that big Musso was not around. He is a big, husky guy. There never was any time when there wasn't at least other Deputies, Kellerman, Fricker, Terry, also around there. That is in addition to Sheriff Callahan and Musso.

These two bodyguards were there, one of them right by Terry at all times, and Florence kind of circulating right along the men. I think that Musso stayed with Florence a good deal of the time because he said he left him.

There was one thing, the first suggestion about Terry leaving there, came from whom? And there is no dispute on this, this is evidence produced by the Government because they put Fricker on first.

He said that he suggested to Terry, he feared when these men came around there, seeing these armed bodyguards and Terry up there who had a gun, so Lehmann says—Terry first denied he ever had or had it on him.

Lehmann says he did have it on him and had it in 1553 his pocket, and the only evidence of any scuffle or violations is where a fellow was near to Jack Green at the time and saw Terry with his gun in his pocket, and reached over and grabbed his right arm, and Green told him, "No, keep away from him" grabbed Terry's arm which was near the gun. That is the only pass at Terry.

All right, what happened when Green went over there? He said, "Get out of the road, go on back, let this car through."

But more pertinent, more indicative of the whole situation and of the truth of this story, and you analyze the truth by picking these little things out which tell you the

direction in which the truth lies, Jack Green says that Terry held out his hand and Green shook hands with him just before he left the place.

Where did they go? He went up on this canal bridge. What did he do?

He stopped there and waited for Florence to come up in the car with Musso. Musso or Florence got out, I don't know what Musso did.

Terry then did what? He got a camera which he
1554 said on the stand he usually carried. Now remember his conversation. He is a contractor building levees. He got out of that car and took pictures. Why? For the same reason that he wanted to make a test case, for the same reason he went to the F. B. I. in March, for the same reason that he never got ahold of Jack Green between the 23rd of March and April 13th, when he did contact him saying that he had been trying to get him all of the time.

But it is peculiar that he was able to get his office twice on that morning, twice on that morning when he knew Green would be there and within less than an hour he did have Green. It wasn't on a very diligent attempt to get Green then.

Why would he go to the F. B. I. before there was any trouble? Why would he get goons or bodyguards, if he wants to call them so?

And these fellows themselves, well, I thought I had a lot of courage at different times, but, brother, I wouldn't want to take all three of them on at once when they had guns in their hands. I think I would run.

1555 Why was he doing all that? Now, ladies and gentlemen, just let's find the reason and there should be some intelligent reason. There is no reason in this case except that—I don't know where the conferences occurred and where he got it in his mind—it wasn't a question of money, it could not have been a question of

money under this evidence, he wanted for some reason, and I don't know what that reason is, to make a test case of this.

Terry did not tell you that he had shaken hands with Jack Green, do you remember that? Terry was on the stand first. Jack Green then got on the stand and testified, and this morning they called Mr. Terry back. Did he deny that he and Green shook hands? If it were not true, don't you suppose the intelligence of the gentlemen who are prosecuting would have known that it should be shown? Of course they did.

I would not refer to it at all except it is indicative of everything that occurred on the part of Terry. I am passing over Wright because I don't believe there is any evidence that supports any attempt in any way to extort or rob Wright, and I don't believe there is about Terry.

1556 But certainly none whatever about even the gathering of the men. I don't care about the number, but I will tell you what I would like to have you do. You remember the cars in these pictures on both sides of the bridge there where Terry took the pictures, if you remember, I think you will see one man.

Terry said in his testimony that he had taken a picture of the cars and the crowd. I don't see any. But that is not so important.

You will find, in my judgment, about 100 cars. I don't think any of those cars would carry more than four or five, let's say six people. If there were six people in all of the cars, and the evidence shows there was not, they couldn't have been more than 600.

Many of those cars went out with one, two, three people in them, as the evidence has shown. I don't believe there were five there. It doesn't make any difference, however.

He said he wanted no trouble. The fact that he said that

is shown by the fact there was no trouble. The little discrepancies shown by various people is evidence of
1557 the fact they are telling the truth.

Ladies and gentlemen, if you and I, the thirteen of us, were to go out in that hall and ask to describe the number of people in this room, or just what these three gentlemen, Mr. Alexander, Mr. Stoddart and Mr. Oxtoby had on, and we come back and write down just our recollections, we would find that we have fourteen different things. It isn't humanly possible for people who have no reason, and also it is equally impossible for people who endeavor to have a reason, to remember incidents that at the time don't seem important, which are trivial to them.

So that they all would be able to testify about the situation alike, it is impossible.

Now I am going to take up just one minute on perhaps something that may seem to you a little personal. It is. I have been employed in this matter, I don't know how long, for some time. I had never met Mr. Green before then. I don't want to blame Mr. Terry, and Ralph Wright, Jr., say they are dictators or Czars. Certainly I don't think anyone in the world is a Colossus. Bob Oxtoby
1558 has a marvelous vocabulary, I am rather envious of him.

But I want to ask you a question:

There is no evidence at all that Jack Green ever attempted to or Mr. Terry or Mr. Wright or anyone else, to make him pay through the nose in order to get men, and no evidence from these men who have no reason in any way that is distinguishable.

It seems to me Mr. Longfellow, Mr. Sexauer, Mr. Wells, the City Engineer here, and Mr. Lomax, who is the representative from the Contractors Union in this area, and Mr. Scaglione, who to me has made a direct and intelligent a witness as I have seen in a long time, those men have no reason to lie to you, to perjure themselves.

They swore, standing there, at the request of the Clerk to put up their hands and to tell the truth to God. Do you suppose there is any reason on earth, any bribing reason could have or would have induced them to lie to you? They said they were not unnecessary, that these laborers were essential.

1559 The evidence of the fact shows six foot ditches were there. I don't care whether they talk about these things or not (indicating exhibits). Put a man on that seat, this is smaller than the one Terry says he had. He could not see. Moreover, remember the testimony that is not disputed in this case.

If a man who has gone along, he never had a picket line before, there is no evidence he ever did, there certainly would have been if he had, if a man is a crook and he is trying to hold up someone, he is merciless. He does not have respect for the other fellow. He does not use those little decent things that endear a decent person to each of us.

Jack Green, without any payment of dues, had the boys who were going to school, during the summertime working. Jack Green got jobs for the disabled veterans and there were no fees or dues paid by them.

I want you, when you go to your jury room in this case, to ask yourselves:

Is that the kind of a man who is a thief?

The statute says "by robbery," is that the man,
1560 is that the kind of man who is an extortionist?

The statute says "by extortion."

Ladies and gentlemen, this case is a misdirection of an intent upon the part of the Government. There was no intention—there was no effort—there was no violation of this statute which was enacted to prevent robbery and extortion.

You have been very patient, and I hope I have not tired you.

I thank you.

1561 Argument on Behalf of the Government (Continued).

By Mr. Alexander: If the Court please—

The Court: Mr. Alexander.

Mr. Alexander: Ladies and gentlemen of the jury:

It is my duty to close this case for the Government. I have felt that counsel have made an effort to belittle the charge, both of them, to establish in your mind that this doesn't amount to much, involving as it does or did, the wages of one or more laborers for perhaps a comparatively short time.

The question of interstate commerce has been extensively argued. I think the Court will instruct you fully on it. The intent of this Act is to prevent any obstruction or any effect to any degree upon interstate commerce. If you think about it carefully, it is one of the most precious rights that you have. It is one of the most important provisions of our Constitution. It is that provision of our Constitution that permits you to get in your car any day you want and ride from the Atlantic to the Pacific, from Canada to Mexico, never crossing and reporting in

1562 a custom house, never reporting to a policeman, never unfairly and unjustly taxed for using the highways through a sister State and permitting a free flow of commerce all through this wonderful country.

It was a long time before Congress passed this Act. I want you to think a moment of the power which has been exhibited by organizations of men in this Nation. We have the growth of a corporate power through all of our history, and that became so great that from time to time it had to be cut down, and these same kinds of laws were provided to prevent the corporations of this Nation and the industry from interfering with interstate commerce by

combinations in restraint of trade, and it doesn't make any difference how big they are and how much money is involved because it is the principle that is established when you bring in a verdict on a case where a party has been proven guilty beyond a reasonable doubt. It is the principle we want. We want to let the whole land know what they can do and what they cannot do, whether the amount involved here is nothing. But to say there couldn't
1563 be any serious results is contrary to the knowledge of every man and woman on this Jury.

I don't have to revert to the boy—the hero of Holland who placed his arm in the hole in the dike. The dike was all there but that little hole. He placed his arm in the dike and held that for hours and hours before the necessary help could come to save that dike.

Why, you men and women in this county, you know what the floods of the Mississippi River are, how they come with short warning, how they destroy a levee, that is not properly maintained. There must be constant maintenance to keep down the erosion, to keep the reeds from growing, and we say that any interference with that maintenance is dangerous no matter how much money is involved insofar as the employer of the labor on that job is concerned.

Just look at this wonderful project, that you, the people of the United States, have built with your funds, standing there looking south through those wonderful locks over to the great industrial area of St. Louis, a center of interstate commerce for this whole Nation.

1564 Think of this canal running around the dangerous portion of the River, and then the River continuing up all the way from there to St. Paul, the Illinois to Chicago, one of the greatest distribution points in the whole world, with railroads radiating out from it to all parts of this country. We cannot stand for interference

with the projects of the people of the United States just because there is a small amount of wages of laborers involved. If that were not true, Congress would not have said whoever interferes to any degree with interstate commerce, but the Court will instruct you fully on that, I am sure.

Now the thing about it is that the only reason we can be standing here prosecuting this case is that interstate commerce is involved. The United States doesn't pass general criminal laws. The United States has no power in the States to enforce the laws about riots, about assault, about threats to the person. That is a matter of State law. But every State in this Union makes the law that one person shall not threaten or assault another, and that
1565 large groups and gangs of men shall not gather together for the purpose of interrupting the rightful activities of another. And there is no State that doesn't have those laws.

So that you know that that kind of conduct is wrongful. Mr. FitzGerald reverts to the word "extortion", he throws in the word "robbery". Of course, the word "robbery" appears in one section of this Act, but you are not interested in robbery. This man is not charged with robbery, he is charged with extortion. And this Act tells you what the extortion is.

"Extortion" under the Act, is the wrongful obtaining of money or property of another by threats of force or actual violence, either one. It may be just the threat; it may be the actual violence. In either case that is extortion. So what do we have here?

What we have here was because a threat of force is unlawful under the State of Illinois, your State, and if it is against the law of the State, it is wrongful. Likewise, actual violence is wrongful. Likewise, the actual assem-

bling of large numbers of men to participate in such
1566 conduct is wrongful.

Mr. FitzGerald: If the Court please, Mr. Alexander is arguing law that is not the law of Illinois. There is no law in Illinois which prevents the congregation of men.

Mr. Alexander: For such purposes—

Mr. FitzGerald: In your statement you have been saying they have no right to congregate.

Mr. Alexander: I know. You went into the Norris-LaGuardia Act.

Mr. FitzGerald: I will give you a Supreme Court of Illinois decision.

The Court: Let's finish the argument.

Mr. Alexander: This argument is an answer to your argument.

Mr. FitzGerald: I object to the repetition of this which is not proper argument and it is prejudicial.

The Court: The Jury are the judges of the facts in this case.

Mr. Alexander: Mr. FitzGerald talked about the Wagner Act, the Norris-LaGuardia Act, and the other Acts of Congress. Well, it has been the history in the last
1567 fifty years, and particularly in the last thirty years, that the powers of labor organizations have been greatly enlarged. There was a time in this country when the powers of a labor organization was greatly limited and much conduct was not approved of; but was not greatly frowned upon because of the acts of others. But now we have grown into a different situation.

We have grown into the situation where the power of labor unions is great and extraordinary, and every time in the history of our country an organization gets too big and too strong, our Congress has cut down their powers and limited them to what is rightful, and that is what we are asking for here, rightful conduct.

Great stress has been laid upon Mr. Terry in this case. He really seems to me to be rather unimportant in the case. You know, we don't make these cases. This isn't a theater, there are no rehearsals here. We take a section of life and try to show what the facts are. And Mr. Terry happens to be a character in this picture. We are not here representing Mr. Terry. We are here representing the People of the United States.

1568 Mr. Terry is merely an incident, he is a witness. He is the man to whom these things happened. Mr. Terry had a right to come over into Illinois. He had a right to bring his tractors and his equipment over into Illinois, and to use them, and he had the right to employ the labor that he wanted. That was his right.

Now maybe he was injudicious, possibly he was. Maybe his conduct wasn't the best in the world. Maybe he shouldn't have asked for bodyguards. He certainly had a reason for them. Maybe he shouldn't have armed them. Maybe he shouldn't have brought a gun over himself. We regard that as immaterial in this case. He was there, he had his bodyguards, they went the day before they came to the sheriff of the county and told about coming on at the beginning of this job. The sheriff says that they didn't say anything about guns. All three of them say they did. But irrespective of that, isn't it surprising that if it was so terribly bad, that the sheriff and his deputies who saw the guns, two of whom were standing in the car and

1569 compared guns and talked about guns, isn't it surprising they did nothing about it, didn't even criticize it, didn't even suggest possibly, "Boys, you had better put those guns away; hide them in the car."?

Now they say Mr. Terry wanted to make a test case. Well, I don't see what difference it makes. He had a right to come over here. He had a right to carry on his contract. Now what is a test?

Well, when you try anything, try doing anything, you are making a test. Suppose he had said, "I am going to try it," to Fricker, and Fricker turned around and said to the sheriff, "He is going to make a test case," or to Green, what difference does it make? He had a notice from the Government that he had to finish his contract, and he was going to try to finish that contract, and he came over to do it.

Now you may say, "Well, wouldn't it have been better for him to go down and talk to Green?" Well, what if it was? That is just a matter of judgment. That does not justify forcible and threatening conduct on others, just because you have poor judgment. Maybe it was a mistake, maybe he could have done better. He didn't. But he was there rightfully on that levee, he was doing Governmental work. His employees were willing to work under the conditions that he provided and they were union men, they were members of the union. So I pay little importance to that.

The big question in this case is what part in these activities did Mr. Green have and what was his intent and what was the intent of the membership of this union, and did they do the things charged? Well, let's look.

Unfortunately in the struggle between capital and labor, there have arisen what is known as jurisdictional disputes, jurisdictional fights. That is a dispute between two unions. The natural and ultimate result of it is that there is a lot of quibbling about some pretty small things. Now in the course of sixteen years the labor union in this community in Madison County had in one way or another induced a union of all of the contracting operators in Madison County to define the limits of the laborers' work, and they are defined right down to a small degree.

If there is a gate to be opened, a laborer must do it. If there is a scoop to attach to a tractor, the

laborer must do it, even though it is only going to be attached once that day. There are thousands of instances of that, and we are not criticizing the labor unions nor are we criticizing capital. It is just one of those things to be ironed out. And the labor unions and the capitalists or industrialists have not been able to iron them out to the satisfaction of either. The result is what?

That the laborers say, "This is my work to attach that scoop to that tractor," and the operating engineers' union says, "It is our work." And there you got a fight between two unions, everybody in the middle, just a constant expense and cost to everybody.

Now they have a right to make those agreements. We do not contend they do not. But they have a right to do it only in a legal manner, and that legal manner is by negotiation to attempt to get a peaceful settlement between the two unions involved and to agree upon the kind of work that each will do. And in Madison County they got
1572 the operators, the contractors to agree, but the union of operating engineers doesn't agree. So that is the cause of this situation.

I am not going to argue about how the Union got that contract. It is not in evidence in this case. All we know about that is this, that Green says he has methods of operating and he has not told us one method that he used, except that he doesn't use pickets, and pickets are legal and a recognized method of obtaining the desires of a labor union. It is their method, their means of informing the public about the dispute, their means of attempting to get the sympathy of the public, their way of influencing other unions to sympathize with them and join in a strike. All those things are legal and we are not objecting to them, and had this defendant and his union taken those means, there would be no case here.

What did happen? I wonder if you have ever visited a

museum where they have up on the walls one of these wonderful tapestries. You look up at it and you wonder what it means. It is filled with little designs, different
1573 colors, little curlicues, and the whole picture as you look up there is confusing. But if you study it, you can find the design in the minds of the artist who wove the tapestry, and from that time on, when you look at the picture, it is the design that stands out and not the little immaterial coloring, curlicues, diagrams and what-not. You see that diagram from then on, the design.

Now what is the design you see in this evidence?

We see first on March 23rd, Green down there on the levee, saw this equipment working and asked Luhning, the operator, to see his boss. I don't care whether he said, "Tell him to come here to the job," or "Telephone to me," or "Call me, get in touch with me." Now there is no question what he wanted to see him about. The first thing he asked Luhning was, "Where is your swamper?" He found out that there was no swamper, and there could be no question in your mind he wanted to stop that kind of an operation, for he said so here on the witness stand, and that was the legal purpose on his part.

1574 All he had to do was adopt legal means.

Now within the next few days this equipment continued to operate, and then one day, out of a clear sky, six, seven or eight men walk down and the testimony is that that group had one or more members of this union in it, and they effectively—what they did was to stop that job. The same thing happened on the same day up on Terry's job.

Now counsel ridicules whether that was the use of force. Luhning didn't stop his job after Green talked to him and called his attention that he didn't have a swamper. Now what happened on the Terry job? We had two witnesses on, Fechte and Koesterer. I don't know which one of

them said if, but one of them did—he was operating his machine and some eight or ten men came along, and again, as I remember the evidence, there was at least one or more union men belonging to this union in that group. What did he say? In answer on cross-examination, as I remember, he said:

"I would have argued with one man, but I wouldn't argue with six."

1575 It is for you to say whether the way those men did that was on those two occasions a threat of force. We do know the men got down and stopped, although under their own rules they could have continued, legally continued. They might have had to have to cross a picket line, which is legal, but they, under their union rules, were acting legally in operating that equipment. And he said he wouldn't argue with more than one, he would argue with one, but not more.

Now it is for you to pass on that.

Now Green has already appeared in here. Here is a part of our design. Oh, you may say, "Well, Green had nothing to do with that." But the union is on trial here, there were union members in those groups, and what did Green say to Wright on the 27th when Wright talked to him at the office? Did Green say, "Why, I don't know what you are talking about, Wright."? Oh, no, he didn't. Didn't he then and there adopt what those two groups of men did down on the Wright job and the Terry job? Didn't he show there that he was carrying out the same policy that his union members were carrying out?

1576 I don't say they didn't have that right to question —of asking these men to stop. The point of it for you to consider is: Did they stop just because they were requested when they don't recognize the rules of this Association in Madison County or did they stop because, as I think the testimony of one witness was, that you had better

park your rig and get down. Is that a threat? I think it is. But it is for you to pass on it.

There is your design started and continued, with Green adopting the activity of these two groups, standing by them and saying to Wright when the latter said, "Well, then I'll pull my equipment out." "That is what you had better do."

Now we maintain that a threat to an employee Luhning as charged in the fourth count is likewise a threat to this man Wright as charged in the second count of the Indictment, and it is for you to say whether that is true upon a consideration of all of the evidence in this case. So there is the design started, and we go up.

1577 Terry says he tried to get in contact with Green. Green went over and talked to the Corps of Engineers. On April 9th, Green reported to his union simply that there was a dispute, but note, the work had stopped and it stopped from the 26th to the 13th of April, and if it had not been for Terry, how long do you suppose that stoppage would have continued? At least until the Government would have succeeded in making a new contract with somebody else. And that is what eventually happened, with men who were willing to come in and bid and employ swampers.

Much—much has been said here about what Mr. O'Neill said, "Why, this was the custom over there." Do you mean to say when I go into another State I have to obey the customs of all of the people? Some customs are good and some are bad. Certainly the custom of requiring a man to employ—compelling him by force to employ laborers that he doesn't want to employ and feels that he doesn't need, I don't think that is a good custom. There are a lot of customs. There was a delightful old custom in this country once that when two men get into an argument,

they would call a couple of their friends in, they
1578 would go out in some pleasantly shaded spot, and take a few potshots at each other. And it wasn't murder, and it wasn't manslaughter, and it wasn't assault. It was just the right to defend your honor. That was a delightful custom, but it took considerable courage on the part of a host of people who fought that custom of duelling until it was put in the form of law that made it manslaughter or murder.

A man has a right ot resist a custom if he doesn't think it is right. That is your right. You don't want it taken away from you just because it is the custom in the neighborhood.

Of course, sometimes it might be judicious, it might be tactful, it might be diplomatic, but the best law of this Nation for labor and capital and everyone has not been made by men who were particularly tactful or diplomatic. It has been made by men who were willing to go out and fight for what they thought was right, to defy custom, and in a proper legal manner obtain the passage of laws
that prevent the kind of things that occurred down
1579 on that Chain of Rocks Canal.

Now, what happened there on the morning of April 13th? I'm not going into all of those details. It is a peculiar thing in this case: practically all of the witnesses are union men. Most of our witnesses are union men that are bound by the same rules and regulations as are the members of Mr. Green's union. They are men who are, no doubt, loyal to their union, they are loyal to the spirit and purpose of organized labor. These men— I don't know whether you have noticed it—but these men come with some reluctance to testify against a union of which they were members in spirit, that we called, members in spirit even though they couldn't vote and control the actions of the union.

Now look at their testimony!

Was there design and motive and purpose shown to organize a huge mass of men to frighten Terry out of completing his job? That is the question. What happens up there at the levee? Why, their witness testified under oath before you, members of that same International Union and some other local, and said:

1580 "I was doing this, and Dale Skeen said, 'Drop it, we are going down to the Hall.'"

To another he said, "Jack wants to see you at the hall. Drop what you are doing!"

To another who was way down in a well, he hollers, "There is a meeting down at the hall, come on up."

You heard those, there were fifteen or twenty of them.

Now what is Dale Skeen? He is Vice-President of that union, and an officer of that union. Do you mean to say that that was a spontaneous uprising by those men who testified here? And I remember everyone but one said he didn't know what it was all about, that he didn't learn what it was about until he got out to the Chain of Rocks Canal. They didn't know what it was all about, although there is talk about their having heard that the goons were around with guns. Why—how then do you explain the testimony of these men who, I say again, were reluctant to testify in this case but spoke the truth when they say that Dale Skeen as an agent of Jack Green called these men from their work where they were earning their living

1581 and made them lose two hours of work, two to four, three. How can you reconcile the action of the Vice-President of this company or organization with that?

Now what was happening down at the Hall? Jack Green is down there. Now I want to tell you, sometimes a witness comes before a Jury and he seems to me that he is a man that just cannot be disbelieved. You can see a look of frankness in his face, you can see from his demeanor,

you can see that he is a man that is just naturally truthful. Now that was that man Bauer. He told you about Dale Skeen. He told you about going down there and seeing Dale Skeen join Jack Green. Then what did he say?

He said Jack Green was talking to a little group of men; that then he came out and he heard him say in substance, "There will be deputy sheriffs out there. Don't pay any attention to them. Just walk around, just mill around."

If you had a little solid core or group of men under your orders, what better way to throw fear into the
1582 heart of a man like Terry, fear for his own safety?

"Mill around. The men on the outside, they don't have to know what is going on. They don't have to be a party to it."

Mr. FitzGerald argues, "Well, all the members of that union would be individually liable." No such thing, gentlemen, and you know it! No member of that organization would be personally liable unless he knew and participated.

And then he says, "Why don't they identify them?" No, we don't. We had great difficulty in identifying eighteen members from their cars. In the course of the trial we probably identified ten or fifteen more. But isn't it strange that of the group that surrounded Terry, of the group that surrounded the machine down on the berm, as far as I remember, we have not a single one identified. That is what I mean to say: if you have a few men, and they constitute a hard core of men who will carry out your purposes, they are the men unidentified who surrounded the machine, who caused or were ready to do all that was necessary to invoke in Terry the fear if he continued his work.

1583 Now the most surprising thing in the whole picture: here is Green right through our tapestry day after day, always appearing on the scene. Some of you may have observed a body of soldiers, a large group, maybe a regiment, assemble. The companies march around and march around, everybody is there, and then what? All of a sudden the big brass hat comes around—and it used to be on a horse—today he comes in a Dodge, not a Cadillac—he comes out and then the parade starts. I say again: isn't it strange, with the sheriff of the county, with three or four deputies, there is not one single person who gave an order to that crowd of men or to Terry? If it was so awful for Terry to have those guns, why didn't the sheriff arrest him? Why didn't he say, "Give me those arms."? If he was afraid of a riot, why didn't he disarm those men?

Instead, what is he doing? Standing up there, talking to Green. When that truck came through with the manure spreader on it and the men gathered around and it had to stop, did the officers say, "Let that truck through!"

Shouldn't we expect of our officers that they at least
1584 take command in a situation like that?

No, Jack Green said it, "Let that truck through, boys!"

He is in command every instant, and then Fricker comes down and says, "Wouldn't it be all right to let Terry go home?"

Why, the idea, the very idea of a sheriff standing there and letting his deputy ask this man, "Wouldn't it be all right to let him go?"

Why should they have done that?

I admit it was a serious situation. I don't deny that. But it does seem to me that he should not have been there the man in command of everybody, the sheriff, his deputies and the men surrounding the machine. And in our modern

day society! He is not an official of the county. The sheriff was there. He could have made arrests. Never a word did he say to disperse that crowd!

Now I say to face a mob of anywhere from five hundred—even one hundred men—is a serious thing. They may be quiet, but if you know you are in a controversy with those men, you know that it wouldn't take much
1585 to start something, and Fricker said that in his testimony when he said "The situation was so tense that I thought this man should be gotten out of here."

Why it was similar to what they call "protective arrest". There isn't any such animal. They simply take a man under their protective wing, and sometimes it is wise you do it; but it is—as far as the men who cause it—it is an evasion of the rights of the man who has to be arrested to protect him, and likewise it is an invasion of the rights of the Government and of these people to have a man driven out of the State who is legally there.

They could have enforced their rights, I have no doubt, in a legal manner; but they chose a different manner. You will remember, and it is not denied in this record, that Terry said—even it is admitted by Green—that Terry said, "Are you going to throw a picket line around me?" And he said, "No." "Well, what are you going to do?"

The answer was, "You will find out."

1586 He found out. He found out.

How long have I got to talk?

Clerk of the Court: Five minutes more.

Mr. Alexander: Now I haven't gone into a lot about the necessity, as Mr. FitzGerald argued, of this man. What happened down there on the levee that day apparently made it necessary to have a laborer work with one of these machines because everybody who started to work on the levee thereafter put them on. That speaks for itself. Longfellow and that other company that finished

the job, they put them on. I don't care whether he asked for a laborer on one machine or all of the machines. He should have used the powers of reasoning, the normal powers that a labor union has.

I don't say it would not have been wise for Terry or any contractor in that territory maybe to follow the custom, but there is no obligation on him to, and if he doesn't, they have their rights and they should use them; but they should not use force and threats of fear and gather together, a crowd of men of whom it may be
1587 they may lose control and who may do serious and terrible damage to both lives and property of others. It is a serious matter to arouse men who have a cause that they think is just. And I think these men thought their cause was just. It is a serions matter to put them in a position where they may lose their heads and do something for which they will be sorry and which is against the law. And that, ladies and gentlemen, is extortion when you compel the man to employ someone who imposes an employee on you, who makes you hire someone you don't want, who makes you use a worker whose work you don't feel you need.

Now as for the necessity of a man on the job, why, the evidence is so clear in this case, so clear, that it is scarcely worth repeating. Why, you know that Luhning, Fechte, Koesterer, Voyles on the 13th, all of them operated those machines day after day without a helper, without a laborer. To hear someone say, "It is necessary," why, it is silly. "Necessary" means you have to have them to make the machine operate properly. The only necessity for it down there was a rule that they
1588 couldn't enforce because they had a jurisdictional dispute with the operating engineers. And we maintain that in the attempt to enforce that rule, and in a sense to enforce tribute in the form of money, wages, that ulti-

mately come from the public, they used force and threats and fear, and it makes no difference whether they used any actual violence or not.

I thank you.

1589 INSTRUCTIONS TO THE JURY.

The Court: Ladies and gentlemen of this Jury, I am indeed grateful for the service you have rendered this Court. I know most of you, and I know that many of you are busy and it is uncomfortable and unpleasant to be away from your homes. But it is one of the duties that citizenship in this country requires. It is a pleasant duty and it is a quite honorable duty to serve as Jurymen in this or any other court because for, may I say, since the adoption of our Constitution it has been the privilege of any person dealing in financial matters or charged with a crime to have the opportunity of presenting his case before a jury commonly known as a jury of his peers, and for that reason you were questioned and examined, attempting by me if I could to determine your right to sit upon a jury in a matter in which both the Government and this defendant were interested.

And you at that time told me, and I am positive from your action and demeanor since you have been here
1590 that you are the proper persons to sit upon a trial of this sort. I want to congratulate you for your promptness in being here every day at this Court, and for your earnest consideration you have given both sides of this case. It has been rather long, unavoidably so. Many witnesses have appeared before you. Persons have expressed their views and what they thought—not what they thought, what they saw and heard and knew about this lawsuit, and from all of those things you must determine the rights of the parties in this suit. And if I may

suggest to you, that whatever I may have said throughout this trial by way of passing on objections or sustaining them or overruling them or permitting certain testimony has not been done with any intent of suggesting to you my thought or views of the facts in this case. I heartily agree with a system that permits juries to pass upon the facts in a particular lawsuit. And so it is my duty, and it is your duty, to listen to the law that is applicable in this case.

The Federal law makes it directly upon a judge to state the law as he sees it and for you to accept the law
1591 as he gives it and makes it equally directive upon you to determine the facts and to apply the law, and so in this case I hope to cover all the material elements that you might be affected by from the view point of the law, and then I shall leave it entirely to you to determine your verdict from the facts.

These defendants, two of them, one of them a corporation, are charged in this Indictment under the law of this country or this land with the commission of an offense, and it is that offense that you must determine whether or not they are guilty of.

The particular provisions of the law that apply to this particular case I shall read to you as I see they should be applied.

Whoever in any way or degree obstructs, delays or affects commerce or the movements of any articles or commodity in commerce by robbery or extortion, or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be punished—so on and so forth.

I have purposely avoided mentioning punishment
1592 because in case of your finding the party or parties guilty, the punishment is entirely a matter for the Court.

They further provide:

As used in this section, the term "extortion" means the obtaining of property from another with his consent induced by wrongful use of actual or threatened force, violence or fear or under color of official right.

The term "commerce" means commerce with in the District of Columbia or any territorial possession of the United States or commerce between any point in a State, territory, possession or the District of Columbia and any point outside thereof, or commerce between points within the same state through any place outside such State, and all other commerce over which the United States has jurisdiction.

This Statute, as you see, provides for punishment of those who attempt, by the wording of this Statute, to affect the commerce within States.

You are not here trying the right of a labor union to strike. You are not here trying any of the matters
1593 pertaining to the rights of a labor union, except this one matter, and this one matter pertains to an alleged action of a labor union in violation of this particular law which I have just read to you which has to do with what the action of this particular labor union or the manager of it would have over the commerce of the country. That is the purpose of it.

There is before you at the present time some four counts in this Indictment. The District Attorney has seen fit to ask you not to consider the other counts, and therefore you have but four counts in this Indictment to consider.

The first one reads that on or about April 13, 1953, at and adjacent to the Chain of Rocks Canal in Madison County, Illinois, within the jurisdiction of this Court, being a projected canal and conduit for traffic in interstate commerce on the Mississippi River and its tribu-

taries, Jack Green and the General Laborers Local #397 of Granite City, Illinois, a labor union and voluntary association of workingmen affiliated with the International Hod Carriers, Building and Common Laborers Union
1594 of America, did unlawfully and willfully obstruct, delay and affect and attempt to obstruct, delay and affect commerce as that term is defined in the section of the law which I have just read to you, interstate commerce and the movement of articles and commodities in such commerce by extortion, as that term is defined in and by said section of the law heretofore read to you, that is to say, by then and there attempting to obtain from another, to wit, Arthur W. Terry, Junior, then doing business under the name, style and description of Terry Engineering Company, and then and there engaged in executing a contract with the United States of America for the maintenance of a levee bordering said canal and theretofore erected and constructed as a part thereof, certain property of said Arthur W. Terry, Junior, to wit, his money in the form of wages to be paid for imposed, unwanted, superfluous and fictitious services of labor commonly called as "swampers" in connection with the machinery and equipment being used and operated by the said Arthur W. Terry, Junior.

1595 As further alleged as aforesaid, then and there intended to be accomplished with the consent of said A. W. Terry, Jr., induced and obtained by the wrongful use, to wit, for the use of the purposes aforesaid, of actual and threatened force, violence and fear made to the said Arthur W. Terry, Jr. and his employees and agents.

Count 2 charges a like offense against the same two defendants resulting from the use of threat and force, violence and fear, made to Ralph Wright, Jr., and employee and agent on March 26, 1953.

Count 4 of the Indictment charges the two defendants

with the commission of a like offense at the same time and place, that the same defendants did unlawfully and wilfully in furtherance of a plan and purpose to commit the offense charged in Count 2 of the Indictment, by committing and threatening physical violence to the person and property of one, Clarence B. Luhning, then and there an employee of Ralph Wright, Jr. and to the property of said Ralph Wright, Jr. all with the intent and purpose of obstructing and affecting commerce.

1596 Count 9 of the Indictment charges that the same two defendants and other persons whose names were to the Grand Jurors unknown conspired to commit the several offenses charged in Counts 1, 2 and 4 of the Indictment.

So you see, ladies and gentlemen, you are trying here only the question under this particular law of its violation. That is a violation by force or threatened force, intimidation of workers or persons concerned in the construction of what is alleged to have been an interstate commerce highway. That is the charge and that is the matter which you must decide here.

Now so far as this being an interstate commerce tramway or highway or whatever we may desire to call it, if you believe the testimony of the Government witnesses, it is unquestionably an interstate commerce highway. That is, it is a canal for some purpose, I know not exactly what, I take it from the roughness of the water of some ten miles that they built a canal about that, and sided it up with this particular tramway or whatever you may

1597 care to call it, on its sides, and the officer testified, if you remember, that it was engaged in interstate commerce. So if you believe that testimony, we can well say that this was a line of traffic that was for the purpose and for the use of interstate transportation of products and goods.

The word used in this particular case is "extortion".

There is no attempt to show robbery in any of the testimony that I have heard. But the charge is extortion, and the extortion is alleged to mean that by the conduct of the labor union and by the conduct of the defendant Green in requiring the use of a swamper, I believe, or some such name, it was extorting the money from the contractor and therefore in this threatened use of it, it became a provision under this law by which the defendant or defendants might be punished or suffer punishment.

Now that is a matter for you to determine, whether or not this man, the swamper, or the man that was requested that they employ, was an unnecessary party, was only an attempt on the part of some person or persons de-
1598 fendant in this suit to obtain money from the contractor for services that were not warranted, that in that case, of course, the defendant might—could be under the evidence, if you so saw, be found guilty of this crime.

It is necessary in a case of this sort that the Government show by evidence that this action was knowingly done, in violation of the law, and was wilfully done, intentionally done.

Now you may consider from the inference of testimony whether or not you believe those facts to be true. It isn't necessary at all times to prove by direct proof of a certain act or a certain thing, but from the inference, the general inference from the whole, if you believe that this was an act that was wilfully and knowingly committed with the intention to affect commerce in that particular district, that may be considered by you without direct testimony in regard to it.

Some mention was made of circumstantial evidence. I would rather suggest it as inferential evidence that may obtain from the direct facts that you have heard; but
1599 circumstances, if directly—if proved, covering the entire case from beginning to end, may be considered by you as testimony in the case.

The indictment in this case is no evidence whatever against the defendants. It is only the charge brought against him. It is the matter which the Government must prove, and which the defendant has a right to rely upon as the proof that may be offered by the Government.

There is in criminal law, different from civil law, the rule known as presumption of innocence. That is a rule of law that anybody charged with a crime comes into Court presumed to be innocent and that presumption stays with that party throughout the trial up until the time, if that time should arrive, when the Jury is convinced beyond a reasonable doubt, of the guilt of the defendant.

A reasonable doubt is often defined in the words of itself, and I think it perhaps the best definition. It doesn't mean the shadow of a doubt, it doesn't mean anything except the Government must prove to your satisfaction beyond a reasonable doubt the guilt of these defendants
1600 before you should so find them guilty. A reasonable doubt means a reasonable doubt, not a shadow of a doubt, a possibility of a doubt, but a reasonable doubt that is sometimes described as that which arises in the mentality of man when he is considering the graver transactions of life, such a doubt as would cause him to pause and hesitate before acting upon those matters.

You are the sole judges of the credibility to be given to each of the witnesses that appeared before you. You have a right to take into consideration their action and demeanor while on the witness stand, their knowledge or means of knowledge about the subjects of which they have testified; and if a witness has been found—if you believe that a witness has been impeached, or you believe that some testimony he may have given is untrue and false, you may disregard all other testimony of that witness unless confirmed by other credible evidence in the case.

The interest or lack of interest in the lawsuit is one
1601 of the matters that you may take into consideration in granting credibility to the testimony of the persons testifying. The defendant in this case has seen fit to testify.

The Court instructs you that the testimony of the defendant should be weighed by the same scales as you weigh the testimony of any other witness that appeared before you. You, of course, have the right to take into consideration that he is a defendant and is interested in the outcome of this particular lawsuit.

The Court instructs the Jury that if you find there was a labor dispute in this case, and a jurisdictional dispute is a labor dispute, it is the law that the term "labor dispute" includes any controversy concerning terms and conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining or seeking to arrange terms or conditions of employment regardless of whether or not the disputants stand in the proximate relation of employer and employee.

The Court instructs the Jury that the Government
1602 must prove the defendant Jack Green and Local No. 397 guilty beyond a reasonable doubt as in any other lawsuit, and before you can find the defendant Jack Green guilty, the Government must prove beyond a reasonable doubt that Jack Green by threats of violence, was attempting or endeavoring to fore Arthur W. Terry, Jr., or Ralph Wright, Jr. to employ and impose unwanted, superfluous, fictitious or unnecessary laborers to work in the performance of his contract for the maintenance work on the levee, and before you can find the defendant Local 397 guilty, the Government must prove beyond a reasonable doubt that Local 397 by threats of violence was attempting or endeavoring to force A. W. Terry, Jr. or Ralph Wright, Jr. to employ and impose unwanted, superfluous, fictitious or unnecessary laborers to work in the per-

formance of the contract for the maintenance work on the levee.

Now, ladies and gentlemen, you will retire to the Jury room and you will select one of your number as chairman or foreman of your jury. That party has the same right to voice his own sentiments in your deliberations or
1603 to cast his ballot, if you should require a ballot to be cast, as any of the rest of you. He merely acts as your foreman, your chairman, and after you have reached a verdict, you will return the same into Court.

The form of the verdict has been prepared in this case. We, the Jury, find the defendant Not Guilty, and all of you will sign the verdict, the foreman first and all the remainder sign later. The second verdict—these are forms only, as you will remember:

We, the Jury, find the defendant Not Guilty—defendants, I believe that is, naming both of them.

And the third,

We, the Jury, find the defendant Guilty, and: We, the Jury, find the defendant, the other party to the suit—one is for Jack Green—we, the Jury find the defendant guilty or not guilty, and sign it; and the other is as to the laborers local: We, the Jury, find the defendant guilty or not guilty, and sign that.

Are there any suggestions on the part of the Government?

1604 (An off-the-record discussion was had outside the hearing of the jury and the court reporter.)

The Court: It has been suggested to me that perhaps I did not make myself clear on the question of intent.

Any person may be supposed to intend—intend the reasonable and probable consequences of an act performed. That is, you don't have to make up your minds right when it is being done, have the intent of it, but if an act performed would result in a certain condition, then intent may be presumed.

Any suggestions on the part of the defense?

Mr. FitzGerald: Just a moment, Your Honor.

The Court: Mr. Clerk:, you may swear the two officers.

(Whereupon said officers were sworn.)

The Court: The alternate juror may step to the Clerk's desk.

All exhibits in the hands of the Marshal.

You may retire with the officers, ladies and gentlemen.

(Whereupon the Jury retired to the Jury Room.)

1605 The Court: Have you entered your exceptions, gentlemen, to any instructions I did not give?

Mr. Alexander: I think the Court should hear what the exceptions are.

Mr. O'Neill: The omission from instruction 4 with reference to "You should find the defendant not guilty."

And secondly, the only other objection is that he did not give instruction 5, which you told us you wouldn't give in Chambers.

The Court: That is right. You know what #5 is?

Mr. Alexander: That short one.

(Whereupon these proceedings in the above entitled cause were recessed subject to call.)

29 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—5236) * *

MOTION.

(Filed Sep. 20, 1954. G. W. Schwaner, Clerk.)

Now comes the defendant, Jack Green, by Schaefer O'Neill and A. M. FitzGerald, his attorneys, at the close of all the evidence offered by the Government, and moves the Court to direct a verdict finding the defendant not guilty of Counts 1, 2, 3, 4, 5, 6, 7, 8 and 9, and in support of this Motion suggests the following:

(1) All of the evidence presented by the Government for each of these Counts fails to establish any cause of action under Section 1951, Title 18, U. S. Code.

(2) All of the evidence wholly fails to prove the guilt of the defendant beyond a reasonable doubt in violation of the section referred to in paragraph 1 hereof.

(3) There is a complete lack of proof of any force or violence to obtain property or money from either Arthur W. Terry, Jr., d/b/a Terry Engineering Co. or Ralph Wright, Jr., d/b/a Midway Excavating Co., or from attempting to do so by any means.

(4) There is a complete lack of evidence as to Arthur W. Terry, Jr., d/b/a Terry Engineering Co. or Ralph Wright, Jr., d/b/a Midway Excavating Co. of any threat of physical violence upon the person or property of either Arthur W. Terry, Jr., d/b/a Terry Engineering Co. or Ralph Wright, Jr. d/b/a Midway Excavating Co.

(5) There is no proof whatever offered by the Government showing any threats or violence.

(6) All of the proof offered by the Government merely shows a strike condition brought about by labor dispute.

A. M. FitzGerald,
Schaefer O'Neill,
Attorneys for Defendant,
Jack Green.

31 IN THE UNITED STATES DISTRICT COURT.
• • (Caption—5236) • •

MOTION.

(Filed Sep. 20, 1954. G. W. Schwaner, Clerk)

Now comes the defendant, General Laborers', Local No. 397 of Granite City, Illinois, a Labor Union and Voluntary Association of Workingmen Affiliated With International Hod Carriers Building and Common Laborers Union of America, by Schaefer O'Neill and A. M. FitzGerald, its attorneys, at the close of all the evidence offered by the Government, and moves the Court to direct a verdict finding the defendant not guilty of Counts 1, 2, 3, 4, 5, 6, 7, 8 and 9, and in support of this Motion suggests the following:

(1) All of the evidence presented by the Government for each of these Counts fails to establish any cause of action under Section 1951, Title 18, U. S. Code.

(2) All of the evidence wholly fails to prove the guilt of the defendant beyond a reasonable doubt in violation of the section referred to in paragraph 1 hereof.

(3) There is a complete lack of proof of any force or violence to obtain property or money from either Arthur W. Terry, Jr., d/b/a Terry Engineering Co. or Ralph Wright, Jr., d/b/a Midway Excavating Co., or from attempting to do so by any means.

32 (4) There is a complete lack of evidence as to Arthur W. Terry, Jr., d/b/a Terry Engineering Co. or Ralph Wright, Jr., d/b/a Midway Excavating Co. of any threat of physical violence upon the person or property of either Arthur W. Terry, Jr., d/b/a Terry Engineering Co. or Ralph Wright, Jr., d/b/a Midway Excavating Co.

(5) There is no proof whatever offered by the Government showing any threats or violence.

(6) All of the proof offered by the Government merely shows a strike condition brought about by labor dispute.

A. M. FitzGerald,
Schaefer O'Neill,
Attorney for Defendant.

33 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—5236) * *

MOTION.

(Filed Sep. 24, 1954. G. W. Schwaner, Clerk.)

Now comes the defendant, Jack Green, by Schaeffer O'Neill and A. M. FitzGerald, his attorneys, and moves the Court, at the close of all the evidence, to direct a verdict finding the defendant not guilty of Counts 1, 2, 3, 4, 5, 6, 7, 8 and 9, and in support of this Motion suggests the following:

(1) The evidence fails to establish any cause of action under Section 1951, Title 18, U. S. Code.

(2) The evidence fails to prove the guilt of the defendant, beyond a reasonable doubt, in violation of the section referred to in paragraph 1.

(3) There is a complete lack of proof of any force or violence to obtain property or money from either Arthur W. Terry, Jr., d/b/a Terry Engineering Co., or Ralph Wright, Jr., d/b/a Midway Excavating Co., or from attempting to do so by any means.

(4) There is a complete lack of evidence as to Arthur W. Terry, Jr., d/b/a Terry Engineering Co., and Robert Wright, Jr., d/b/a Midway Construction Co., of any threat or physical violence upon the person and property

of either Arthur W. Terry, Jr., d/b/a Terry Engineer-
34 ing Co. or Ralph Wright, Jr., d/b/a Midway Construction Co.

(5) There is no proof whatever showing any threats or violence.

(6) All of the proof offered merely shows a strike condition brought about by Labor dispute.

(7) There is no evidence in this case to show any conspiracy and the principle of association sometimes used in conspiracy cases cannot apply to association by members of a labor union.

Schaefer O'Neill,
A. M. FitzGerald,
Attorneys for Defendant,
Jack Green.

35 IN THE UNITED STATES DISTRICT COURT.
• • (Caption—5236) • •

MOTION.

(Filed Sept. 24, 1954. G. W. Schwaner, Clerk.)

Now comes the defendant, General Laborers' Local #397, of Granite City, Illinois, a Labor Union, and Voluntary Association of Workingmen Affiliated with International Hodcarriers Building and Common Laborers Union of America, by Schaefer O'Neill and A. M. FitzGerald, its attorneys, and moves the Court, at the close of all the evidence, to direct a verdict finding the defendant not guilty of Counts 1, 2, 3, 4, 5, 6, 7, 8 and 9, and in support of this Motion suggests the following:

(1) The evidence fails to establish any cause of action under Section 1951, Title 18, U. S. Code.

(2) The evidence fails to prove the guilt of the defend-

ant, beyond a reasonable doubt, in violation of the section referred to in paragraph 1.

(3) There is a complete lack of proof of any force or violence to obtain property or money from either Arthur W. Terry, Jr. d/b/a Terry Engineering Co., or Ralph Wright, Jr., d/b/a Midway Excavating Co., or from attempting to do so by any means.

(4) There is a complete lack of evidence as to Arthur W. Terry, Jr., d/b/a Terry Engineering Co., and Robert Wright, Jr., d/b/a Midway Construction Co., of any
36 threat or physical violence upon the person and property of either Arthur W. Terry, Jr., d/b/a Terry Engineering Co. or Ralph Wright, Jr., d/b/a Midway Construction Co.

(5) There is no proof whatever showing any threats or violence.

(6) All of the proof offered merely shows a strike condition brought about by Labor dispute.

(7) There is no evidence in this case to show any conspiracy and the principle of association sometimes used in conspiracy cases cannot apply to association by members of a labor union.

Schaefer O'Neill,
A. M. FitzGerald,
Attorneys for Defendant.

37 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—5236) * *

(Filed Sept. 24, 1954. G. W. Schwaner, Clerk.)

We, the Jury, find the defendant, Jack Green, guilty on counts one and two and not guilty on counts four and nine.

Mack Witt,
Foreman,

Martha Burling,
Florence Loos,
Russell Greer,
Hugh T. Kircher,
Merlin Richter,
William Keller,
Homer Adams,
L. C. Huseman,
W. H. Bunte,
Lewis Logsdon,
Charles Trontner.

38 IN THE DISTRICT COURT OF THE UNITED STATES.
• • (Caption—5236) • •

(Filed Sept. 24, 1954. G. W. Schwaner, Clerk.)

We, the Jury, find the defendant, Gen. Laborers Local No. 397, guilty on counts one and two and not guilty on counts four and nine.

Mack Witt,
Foreman.

Martha Burling,
Florence Loos,
Russell Greer,
Hugh T. Kircher,
Merlin Richter,
William Keller,
Homer Adams,
L. C. Huseman,
W. H. Bunte,
Lewis Logsdon,
Charles Trontner.

39 IN THE UNITED STATES DISTRICT COURT.
• • (Caption—5236) • •

MOTION OF DEFENDANT, JACK GREEN, FOR JUDGMENT OF ACQUITTAL, AND IN THE ALTERNATIVE FOR A NEW TRIAL.

(Filed Oct. 4, 1954. G. W. Schwaner, Clerk.)

Now comes the defendant, Jack Green, by his attorneys, Schaefer O'Neill and A. M. FitzGerald, and respectfully shows to the Court the following:

(1) That at the close of the evidence for the prosecution and at the close of all the evidence in this case, motions

were filed on behalf of this defendant for a directed verdict; that said motions were taken under advisement by the Court and at this time remain under advisement by the Court; that the said motions and the grounds suggested in support thereof are hereby renewed in support of this motion of the defendant Jack Green, for judgment of acquittal; and in addition thereto this defendant shows to the Court the following grounds in support hereof.

(a) There is no proof of any obstruction, delay or affecting of commerce or the movement of any article or commodity in commerce, which is one of the essential elements of the offense proscribed by Section 1951, Title 18, U. S. C.

(b) The evidence in this case, taken in the light most favorable to the prosecution, discloses no more than a "feather-bedding" situation, or labor activity of a legal character.

(c) No clear proof of this defendant's actual participation in, or actual authorization of any unlawful acts of individual officers, members, or agents, or ratification of any such acts, as required by Sec. 106, Title 29 U. S. C. referred to in sub-paragraph (c) of the Act under which this prosecution was brought. (Sec. 1951, Title 18, U. S. C.)

(d) The evidence in this case, considered in the light most favorable to the prosecution, proved or tended to prove only such act or acts on the part of this defendant as are expressly held not to be violations of any law of the United States by Sec. 52, Title 29, U. S. C., referred to in sub-paragraph (c) of the Act under which this prosecution was brought. (Sec. 1951, Title 18, U. S. C.)

(e) The complete lack of proof showing or tending to show how any extortion or attempted extortion in any way affected any commerce, and if so, what commerce.

(f) The evidence in this case, considered in the light most favorable to the prosecution, proved or tended to prove no more than a simple labor dispute.

Motion For New Trial.

Defendant, Jack Green, moves the Court, in the alternative, to grant him a new trial for the following reasons:

(1) The Court erred in denying defendant's motions for a directed verdict and for judgment of acquittal.

(2) The evidence wholly fails to establish the guilt of the defendant Green beyond a reasonable doubt.

(3) There is no competent evidence to show intent of the defendant.

41 (4) The verdict is contrary to the weight of the evidence.

(5) The verdict is not supported by substantial evidence.

(6) The Court erred in sustaining objections to certain questions addressed to the witness, Jack Green, which questions were competent, relevant and material.

(7) The Court erred in admitting testimony of certain of the prosecution's witnesses, over the objections of the defendants.

(8) The Court erred in instructing the jury and in refusing to instruct the jury as requested, particularly with reference to defendant's requested instructions numbers 4 and 5.

(9) The failure to define "commerce," within the meaning of the Act in question, as a result of which the jury was wholly uninformed on this essential issue and unable therefore to return a fair and impartial verdict.

(10) Failure of the jury to properly understand the case and the issues therein, as was shown by the inconsistency of the verdicts returned.

(11) The evidence and instructions made a legal form of labor activity, to-wit: "feather-bedding," an issue in the case upon which the jury could base its verdict.

(12) Under the evidence and instructions the mere ex-

istence of a "labor dispute" was made an issue in the case upon which the jury could base its verdict.

(13) The defendant was substantially prejudiced and deprived of a fair trial by reason of the following circumstances:

(a) the remarks of one of the attorneys for the government in his argument that the defendant was a "colossus," that he was a "dictator," that he was a "czar," that he was "running Madison County," that he was guilty of "corruption" and "overwhelming arrogance," and that he said "I'm the boss down here, come and see me"; all of which said remarks were wholly unsupported by the evidence, were highly inflammatory and designed to prejudice the jury against this defendant.

42 (b) the remarks of one of the attorneys for the government in his argument that labor unions had to be restrained by law in order "to preserve interstate commerce," which remarks exceeded the scope of the evidence in this case which was to the effect that nothing which occurred on March 26, 1953, and April 13, 1953, in any manner interfered with interstate commerce.

(14) The verdict of the jury is the result of passion and prejudice.

(15) There is clear and reasonable doubt that the government proved the charge made in the indictment and each count thereof.

(16) No clear proof that this defendant actually participated in, authorized or ratified any unlawful acts, as required by Sec. 106, Title 29, U. S. C., referred to in subparagraph (c) of the Act involved. (Sec. 1951, Title 18, U. S. C.)

(17) The evidence failed to establish beyond a reasonable doubt that any offense against the United States

under Sec. 1951 (c), Title 18, U. S. C., and Sec. 52, Title 29, U. S. C., was committed by this defendant.

Schaefer O'Neill,
A. M. FitzGerald,
Attorneys for Defendant Jack Green.

43 IN THE UNITED STATES DISTRICT COURT.
• • (Caption—5236) • •

MOTION OF DEFENDANT, GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, ILLINOIS, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA, FOR JUDGMENT OF ACQUITTAL, AND IN THE ALTERNATIVE FOR A NEW TRIAL.

(Filed Oct. 4, 1954. G. W. Schwaner, Clerk.)

Now comes the defendant, General Laborers' Local No. 397 of Granite City, Illinois, a labor union and voluntary association of workingmen affiliated with International Hod Carriers Building and Common Laborers Union of America, by its attorneys, Schaefer O'Neill and A. M. FitzGerald, and respectfully shows to the Court the following:

(1) That at the close of the evidence for the prosecution and at the close of all the evidence in this case, motions were filed on behalf of this defendant for a directed verdict; that said motions were taken under advisement by the Court and at this time remain under advisement by the Court; that the said motions and the grounds suggested in support thereof are hereby renewed in support of this motion of the defendant, General Laborers' Local No. 397

of Granite City, Illinois, a labor union and voluntary
44 association of workingmen affiliated with International Hod Carriers Building and Common Laborers Union of America, for judgment of acquittal; and in addition thereto this defendant shows to the Court the following grounds in support hereof.

(a) There is no proof of any obstruction, delay or affecting of commerce or the movement of any article or commodity in commerce, which is one of the essential elements of the offense proscribed by Section 1951, Title 18, U. S. C.

(b) The evidence in this case, taken in the light most favorable to the prosecution, discloses no more than a "feather-bedding" situation or labor activity of a legal character.

(c) No clear proof of this defendant's actual participation in, or actual authorization of any unlawful acts of individual officers, members, or agents, or ratification of any such acts, as required by Sec. 106, Title 29 U. S. C. referred to in sub-paragraph (c) of the Act under which this prosecution was brought. (Sec. 1951, Title 18 USC.).

(d) The evidence in this case, considered in the light most favorable to the prosecution, proved or tended to prove no more than act or acts on the part of this defendant as are expressly held not to be violations of any law of the United States by Sec. 52 Title 29, U. S. C., referred to in sub-paragraph (c) of the Act under which this prosecution was brought. (Sec. 1951, Title 18 U. S. C.)

(e) The complete lack of proof showing or tending to show how any extortion or attempted extortion in any way affected any commerce, and if so, what commerce.

(f) The evidence in this case, considered in the light most favorable to the prosecution, proved or tended to prove no more than a simple labor dispute.

45 Motion for New Trial.

Defendant, General Laborers' Local No. 397 of Granite City, Illinois, a labor union and voluntary association of workingmen affiliated with International Hod Carriers Building and Common Laborers Union of America, moves the Court, in the alternative, to grant it a new trial for the following reasons:

(1) The Court erred in denying defendant's motions for a directed verdict and for judgment of acquittal.

(2) The evidence wholly fails to establish the guilt of the defendant, General Laborers' Local No. 397 of Granite City, Illinois, beyond a reasonable doubt.

(3) There is no competent evidence to show intent of the defendant.

(4) The verdict is contrary to the weight of the evidence.

(5) The verdict is not supported by substantial evidence.

(6) The Court erred in sustaining objections to certain questions addressed to the witness, Jack Green, which questions were competent, relevant and material.

(7) The Court erred in admitting testimony of certain of the prosecution's witnesses, over the objections of the defendants.

(8) The Court erred in instructing the jury and in refusing to instruct the jury as requested, particularly with reference to defendant's requested instructions numbers 4 and 5.

(9) The failure to define "commerce", within the meaning of the Act in question, as a result of which the jury was wholly uninformed on this essential issue and unable therefore to return a fair and impartial verdict.

(10) Failure of the jury to properly understand the case and the issues therein, as was shown by the inconsistency of the verdicts returned.

(11) The evidence and instructions made a legal form of labor activity, to-wit: "feather-bedding", an issue in the case upon which the jury could base its verdict.

(12) Under the evidence and instructions the mere existence of a "labor dispute" was made an issue in the case upon which the jury could base its verdict.

(13) The defendant was substantially prejudiced and deprived of a fair trial by reason of the following circumstances:

(a) the remarks of one of the attorneys for the government in his argument that Jack Green, this defendant's business agent, and co-defendant in this case, was a "collossus", and he was a "dictator", that he was a "czar", that he was "running Madison County", that he was guilty of "corruption" and "overwhelming arroganee", and that he said "I'm the boss down here, come and see me"; all of which said remarks were wholly unsupported by the evidence, were highly inflammatory and designed to prejudice the jury against this defendant.

(b) the remarks of one of the attorneys for the government in his argument that labor unions had to be restrained by law in order "to preserve interstate commerce", which remarks exceeded the scope of the evidence in this case which was to the effect that nothing which occurred on March 26, 1953, and April 13, 1953, in any manner interfered with interstate commerce.

(14) The verdict of the jury is the result of passion and prejudice.

(15) There is clear and reasonable doubt that the government proved the charge made in the indictment and each count thereof.

(16) No clear proof that this defendant actually participated in, authorized or ratified any unlawful acts, as required by Sec. 106 Title 29 U. S. C., referred to in

sub-paragraph (c) of the Act involved. (Sec. 1951, Title 18, U. S. C.)

(17) The evidence failed to establish beyond a reasonable doubt that any offense against the United States under Sec. 1951(c) Title 18 U. S. C., and Sec. 52, Title 29 U. S. C. was committed by this defendant.

Schaeffer O'Neill,
A. M. FitzGerald,
Attorneys for Defendant.

47 IN THE UNITED STATES DISTRICT COURT.
(Caption—5236)

MOTION OF DEFENDANT JACK GREEN IN ARREST OF JUDGMENT.

(Filed Oct. 4, 1954. G. W. Schwaner, Clerk.)

Now comes the defendant, Jack Green, by his attorneys, Schaefer O'Neill and A. M. FitzGerald, and moves the Court to arrest the judgment in the above entitled cause for the following reasons:

(1) The indictment does not state facts sufficient to constitute an offense against the United States.

(a) The indictment fails to allege facts showing the nature of the commerce affected.

(b) The indictment fails to allege facts showing where and between what points any commerce was moving.

(c) The indictment fails to allege facts showing the origin of any commerce at any point within a state and its movement to or through any point outside such state.

(d) The indictment fails to allege facts showing in what manner or how any commerce was affected.

(e) The indictment fails to allege facts showing how any acts of this defendant affected any commerce.

48 (f) Counts 1 and 2 purport to charge extortion. However, each of said counts fails to allege sufficient facts to charge such extortion.

(g) Counts 1 and 2 fail to allege any facts comprising the wrongful use of actual or threatened force, violence or fear, and fail to allege in what respect defendant's conduct was wrongful, nor does either of said counts allege any act or acts constituting the use of actual or threatened force, violence and fear, nor how such act or acts affected any commerce.

(h) The indictment alleges mere conclusions as distinguished from facts and therefore fails to charge the ingredients of any crime.

(i) The indictment fails to allege any facts showing how any extortion affected any commerce, or any connection whatever between the two.

(j) The indictment fails to allege any criminal intent upon the part of this defendant.

(2) This court is without jurisdiction of the offense.

(a) The offense charged, if any, did not in any way involve interstate commerce.

(b) The facts alleged in the indictment fail to set forth an offense against the United States such as to give this court jurisdiction.

(c) A proper construction of the statute in question clearly indicates that it does not cover the type of activity charged in this indictment; to interpret the Act in question as covering the type of activity charged in this indictment, is to extend the jurisdiction of this court and the power of Congress beyond their constitutional limits.

Schaefer O'Neill,
A. M. FitzGerald,
Attorneys for defendant Jack Green.

49 IN THE UNITED STATES DISTRICT COURT.
(Caption—5236)

MOTION OF DEFENDANT GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, ILLINOIS, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA.

(Filed Oct. 4, 1954. G. W. Schwaner, Clerk.)

Now comes the defendant, General Laborers' Local No. 397 of Granite City, Illinois, A Labor Union And Voluntary Association Of Workingmen Affiliated With International Hod Carriers Building and Common Laborers Union Of America, by its attorneys, Schaefer O'Neill and A. M. FitzGerald, and moves the Court to arrest the judgment in the above entitled cause for the following reasons:

(1) The indictment does not state facts sufficient to constitute an offense against the United States.

(a) The indictment fails to allege facts showing the nature of the commerce affected.

(b) The indictment fails to allege facts showing where and between what points any commerce was moving.

(c) The indictment fails to allege facts showing the origin of any commerce at any point within a state and its movement to or through any point outside such state.

50 (d) The indictment fails to allege facts showing in what manner or how any commerce was affected.

(e) The indictment fails to allege facts showing how any acts of this defendant affected any commerce.

(f) Counts 1 and 2 purport to charge extortion. However, each of said counts fails to allege sufficient facts to charge such extortion.

(g) Counts 1 and 2 fail to allege any facts comprising the wrongful use of actual or threatened force, violence or fear, and fail to allege in what respect defendant's conduct was wrongful, nor does either of said counts allege any act or acts constituting the use of actual or threatened force, violence and fear, nor how such act or acts affected any commerce.

(h) The indictment alleges mere conclusions as distinguished from facts and therefore fails to charge the ingredients of any crime.

(i) The indictment fails to allege any facts showing how any extortion affected any commerce, or any connection whatever between the two.

(j) The indictment fails to allege any criminal intent upon the part of this defendant.

(2) This court is without jurisdiction of the offense.

(a) The offense charged, if any, did not in any way involve interstate commerce.

(b) The facts alleged in the indictment fail to set forth an offense against the United States such as to give this court jurisdiction.

(c) A proper construction of the statute in question clearly indicates that it does not cover the type of activity charged in this indictment; to interpret the Act in question as covering the type of activity charged in this indictment, is to extend the jurisdiction of this Court and the power of Congress beyond their constitutional limits.

Schaefer O'Neill,
A. M. FitzGerald,
Attorneys for Defendant.

51 IN THE UNITED STATES DISTRICT COURT.
• • (Caption—5236) • •

MEMORANDUM OPINION.

(Filed Jan. 24, 1955. G. W. Schwaner, Clerk.)

The Defendant Jack Green and the Labor Union Local No. 397 were found guilty by a jury of violating the Federal Anti-Racketeering Act. After the trial, motions for judgment of acquittal, new trial, and in arrest of judgment were duly filed and argued. The motions for judgment of acquittal and for new trial are denied, but the Court is of the opinion that the motion in arrest of judgment should be allowed for the following reasons:

1. That the Court is without jurisdiction of the offense because the facts alleged in the Indictment fail to set forth an offense against the United States such as to give this Court jurisdiction.

2. A proper construction of the Anti-Racketeering Act clearly indicates that it does not cover the type of activity charged in the Indictment, and to interpret the act in question as covering the type of activity charged in the Indictment is to extend the jurisdiction of the Court, and the power of Congress beyond their Constitutional limits.

The main difficulty that I find with this proceeding is the charge of the Indictment, and in this connection I am concerned only with Counts One and Two, under which the jury determined each of the Defendants were guilty. The pertinent provisions of the Indictment are as follows:

52 "the Defendants did • • • obstruct, delay and affect and attempt to obstruct, delay, and affect • • • interstate commerce • • • by extortion • • • by attempting to obtain from Arthur W. Terry, Jr., • • • his money in the form of wages to be paid for imposed, unwanted, superfluous, and fictitious services

> of laborers * * *, the attempted obtaining of said money * * * being then intended to be accomplished and accomplished with the consent of said Arthur W. Terry, Jr., * * * by the wrongful use * * * of actual and threatened force, violence and fear * * *."

The statute in question is Section 1951 of Title 18, U. S. C., commonly referred to as the Hobbs Act, or the Anti-Racketeering Act. Before arriving at my decision, I made a personal investigation as to the intent of Congress in the passage of this Act. This statute was originally passed in 1934, and there have been surprisingly few decisions construing this statute since its original passage.

The original Act specifically excepted the activity of the use of threats or force to obtain the payment of wages by a bona fide employer to a bona fide employee. In *United States* v. *Local 807* (1942), 315 U. S. 521, the Supreme Court analyzed this exception in considerable detail, and held that the statute did not apply where a person had used threats of force or other violent means to either achieve the status of an employee for a member of his Union, or to secure wages for services. When the Hobbs Act was amended in 1946, no exception was made for cases where the property involved should be money demanded to be paid in the form of wages in the definition of extortion. Nevertheless, the Anti-Racketeering Act specifically provides that it is not to be construed to repeal, modify or affect the provisions of the Norris-LaGuardia Act and the Wagner Act.

When the motion to dismiss this indictment was argued, the main attack was directed to whether or not sufficient allegations were made to show that interstate commerce had been affected to any degree. Very little if anything was said by the Defendants with respect to whether the charges of the indictment constituted a crime under the construction of Section 1951 of Title 18, U. S. C. At that

time I sustained the indictment because in my opinion sufficient allegations as to interstate commerce were made.

53 It is now contended that the Indictment does not state a cause of action within the meaning of the above section. In the usual extortion case, the extorter is obtaining money or property of another for his own benefit. This has generally been true in the racketeering cases which have been tried within the Southern District of Illinois, the Eastern District of Illinois, and the Eastern District of Missouri. In those types of cases, the original demand is unlawful, and certainly the means to carry out the demand in those cases were unlawful and within the purview of the statute and the constitutional limits of Congress to enact statutes to protect interstate commerce. In the case at hand, I conclude that Green's original activity in "attempting to obtain from Arthur W. Terry, Jr. his money in the form of wages to be paid for imposed, unwanted, superfluous and fictitious services of laborers" which said charge was seriously controverted, was of itself not a violation of this statute, and within his rights and responsibilities as a Union representative, which was not prohibited by this statute.

The United States Supreme Court has recently held that a demand by a Union representative for "feather bedding" is not an unfair labor practice. *American Newspaper Publishers Assn.* v. *N. L. R. B.*, 345 U. S. 100 (1953); *Labor Board* v. *Gamble Enterprises*, 345 U. S. 117 (1953). It seems incongruous that Congress intended that a lawful act on the part of Green in demanding money in the form of wages from the contractor to be paid for imposed, unwanted and fictitious services of laborers, accompanied by either threats of force or violence (which under State law constitute only misdemeanors) can be punished as a severe

felony carrying a maximum of twenty years in the penitentiary under the Federal law.

When this Bill came before the House of Representatives it was argued in detail by the members of the Judiciary Committee, and without a dissenting voice they maintained that this particular Bill meant just what it said. It was a Bill against robbery and extortion and had nothing whatever to do with labor laws, and their provisions. For this Court now to say that when a labor
54 organization or officer of said organization advocated and demanded the employment of labor, which had been customary and agreed to by contractors and laborers in this Community, was a violation of this particular Act appears to me to be unreasonable.

After reading the Indictment I concur with the decision of Judge George H. Moore, in the Eastern District of Missouri, *United States of America* v. *Richard Kavner, et al.*, Defendants, in a similar Indictment, and I conclude that the trouble in this Community and on this particular job was caused by a disagreement between the contractor and labor, and was in no wise an attempt to extort for the use of either the Union or the Defendant Green, any money or property of the contractor.

This memorandum opinion is to be filed with the Clerk of the Court, together with the written order of this Court which has been entered today arresting judgment.

J. Leroy Adair,
United States District Judge.

Enter: January 24, 1955.

55 IN THE UNITED STATES DISTRICT COURT
• • (Caption—5236) • •

ORDER ON MOTIONS IN ARREST OF JUDGMENT.

(Filed Jan. 24, 1955. G. W. Schwaner, Clerk.)

This cause now coming on for the decision of the Court with respect to the pending motions following full hearing and argument thereon heretofore held by the Court;

At the close of all of the evidence offered by the Government, the Defendants Jack Green and General Laborers' Local 397 of Granite City, Illinois, a Labor Union, each filed a motion for judgment of acquittal and at the close of all the evidence in the cause, each of the Defendants filed motion for judgment of acquittal, which motions the Court held under advisement; and now as to each of said four motions after full hearing and due consideration by the Court, the same are denied.

Following the return of the verdict of the jury in this cause, the Defendants filed their separate motions for judgment of acquittal and in the alternative for a new trial; and now the Court, after full argument thereon, upon due consideration thereof, denies each of said motions.

Following the return of the verdict in this cause, the Defendants filed their separate motions in arrest of
56 judgment, assigning as reason therefor, among other things, the following:

1. • • •

2. This court is without jurisdiction of the offense.

(b) The facts alleged in the Indictment failed to set forth an offense against the United States such as to give this Court jurisdiction.

(c) A proper construction of the statute in question clearly indicates that it does not cover the type of activity charged in this indictment; to interpret the Act in question as covering the type of activity charged in

this Indictment is to extend the jurisdiction of this Court and the power of Congress beyond their Constitutional limits.

And now this Court after full argument of the aforesaid motion in arrest of judgment, and upon due consideration thereof, doth hereby sustain the same solely on the grounds hereinabove set forth, and it is the order of the Court that the entry of the judgment herein on the verdict of the jury finding said Defendants guilty on Counts One and Two of said Indictment be and the same is hereby arrested.

Dated: Jan. 24, 1955.

Enter:

J. Leroy Adair,
Judge.

57 IN THE UNITED STATES DISTRICT COURT
For the Southern District of Illinois,
Southern Division.

United States of America,
vs.
Jack Green and General Laborers' Local No. 397 of Granite City, a Labor Union and Voluntary Association of Workingmen Affiliated with International Hod Carriers Building and Common Laborers Union of America.
} Criminal Action No. 5236.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES.

(Filed Feb. 21, 1955. G. W. Schwaner, Clerk.)

I. Notice is hereby given that the United States of America, the plaintiff above named, hereby appeals to the Supreme Court of the United States from the order entered

on January 24, 1955, arresting judgment of conviction for insufficiency of the indictment, which charged that defendants obstructed, delayed and affected interstate commerce by extortion by attempting to obtain from an employer his money in the form of wages to be paid for imposed, unwanted, superfluous and fictitious services of laborers through the wrongful use of actual and threatened force, violence and fear in violation of 18 U.S.C. Section 1951.

This appeal is taken pursuant to 18 U.S.C. Section 3731.

II. The Clerk will please prepare a transcript of the record in this case, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

58 1. Transcript of docket entries
2. Indictment
3. Verdict
4. Motion in arrest of judgment
5. Memorandum opinion rendered January 24, 1955
6. Order granting motion in arrest of judgment and denying motion for judgment of acquittal and motion for a new trial
7. Notice of appeal

III. The following question is presented by this appeal:

Whether the obstruction of commerce or the attempt to do so by the wrongful use of actual and threatened force, violence and fear, in an attempt to compel an employer to pay wages for unwanted, superfluous and fictitious services of laborers, is a violation of 18 U.S.C. 1951.

Simon E. Sobeloff,
Solicitor General.

Proof of Service.

We, A. M. FitzGerald and Schaefer O'Neill, counsel of record for Jack Green and General Laborers' Local No. 397 of Granite City, a Labor Union and voluntary association of workingmen affiliated with International Hod Carriers Building and Common Laborers' Union of America, defendants herein, hereby acknowledge receipt of a copy of the foregoing Notice of Appeal to the Supreme Court of the United States, this 21st day of February, 1955.

A. M. FitzGerald,
Schaefer O'Neill.

59 IN THE UNITED STATES DISTRICT COURT.
(Caption—5236)

MOTION FOR EXTENSION OF TIME TO FILE DEFENDANTS-APPELLEES' PRAECIPE FOR SUPPLEMENTAL RECORD.

(Filed Feb. 28, 1955. G. W. Schwaner, Clerk.)

To: Honorable J. LeRoy Adair,
United States District Judge,
Southern District of Illinois.

Jack Green and General Laborers' Local No. 397 of Granite City, Illinois, defendants-appellees in the above entitled cause move the Court to grant to them an extension of time from March 2, 1955, to March 22, 1955, within which they may file a praecipe, addressed to the Clerk of this Honorable Court, for including in the record additional portions of the record not heretofore specified by United States Solicitor General in his praecipe filed with the notice of appeal from the decision of this Honorable Court to the Supreme Court of the United States, and in support of this Motion, states:

(1) Notice of appeal was filed with the Clerk of this Court on February 21, 1955.

(2) The praecipe of defendants-appellees under the 60 rules of Court must be filed within 10 days of that date.

(3) Counsel representing defendants-appellees will be unable to have a conference about the additional matter to be included in the record until Friday, February 25, 1955, or Monday, February 28, 1955, prior to which time they desire to check the record and determine the portions thereof which should be included and also check the authorities with reference to the advisability of requesting the additional parts of the record, now the opinion of one of two counsel for defendants-appellees which should be filed.

(4) It is the opinion of A. M. FitzGerald, who is preparing this Motion, who is one of counsel for both defendants-appellees, that the entire transcript of record of all of the evidence presented should be included. However, he has had no opportunity to confer with Associate counsel, Schaefer O'Neill, of Alton, Illinois, in regard to this, and will be unable to do so within the time indicated; also if portions of said record need not be included, he has not had time and will be unable prior to March 2, 1955, to make inspection of the record in order to determine what portions may clearly disclose the matters and things involved, in his opinion, in this appeal.

(5) This motion is not made to hinder or delay this case, but rather that a complete record be filed.

Dated this 23rd day of February, A.D. 1955.

A. M. FitzGerald,
Schaefer O'Neill,
Attorneys for Defendants-Appellees.

61 IN THE UNITED STATES DISTRICT COURT.
(Caption—5236)

NOTICE OF FILING OF MOTION FOR EXTENSION OF TIME TO FILE PRAECIPE FOR SUPPLEMENTAL RECORD IN THE ABOVE ENTITLED CAUSE.

(Filed Feb. 28, 1955. G. W. Schwaner, Clerk.)

To: Hon. John B. Stoddart
United States Attorney for
the Southern District of Illinois
Springfield, Illinois.

You are hereby notified that the defendants-appellees are today preparing and forwarding by mail to the Honorable J. Leroy Adair, United States District Judge for the Southern District of Illinois, before whom the above case was tried, a Motion for an extension of time within which to file a praecipe, indicating additional portions of the record to be incorporated in the transcript, from March 2, 1955, to March 22, 1955, a copy of which Motion is hereto attached.

Dated this 23rd day of February, 1955.

A. M. FitzGerald,
Schaefer O'Neill,
Attorneys for Defendants-Appellees.

Copy of the above Notice and Motion for extension referred to therein received this 23rd day of February, 1955.

John B. Stoddart,
United States Attorney,
Southern District of Illinois.

62 IN THE UNITED STATES DISTRICT COURT.
(Caption—5236)

ORDER.

(Filed Feb. 28, 1955. G. W. Schwaner, Clerk.)

A Motion for Extension of time to file Defendants-Appellees' praecipe for supplemental record having been presented to the court, and there being no objection made to the extension;

It Is Ordered by the Court that said Motion be and it is hereby allowed, and defendants-appellees are hereby granted an extension of time from March 2, 1955 to March 22, 1955, within which to file a praecipe, for including in the record additional portions of the record to be incorporated in the transcript on appeal.

Dated this 28th day of February, A.D. 1955.

J. Leroy Adair,
United States District Judge.

63 IN THE UNITED STATES DISTRICT COURT.
(Caption—5236)

CROSS-DESIGNATION AND PRAECIPE FOR ADDITIONAL RECORD ON APPEAL.

(Filed Mar. 15, 1955. G. W. Schwaner, Clerk.)

I. On January 24, 1954, the District Court entered an order designated as being in arrest of judgment of conviction and filed therewith a Memorandum of Opinion showing that entry of judgment on the jury's verdict was arrested in fact for insufficiency of the indictment to charge a crime under 18 U. S. C. Section 1951, when considered in the light of the evidence.

II. The Clerk is hereby requested, pursuant to the provisions of Rule 12 of the Rules of the United States Supreme Court, to include in the transcript of record, on the appeal herein, in addition to the portion of the record designated by the appellant herein in his praecipe (Part II of his Notice of Appeal), the following:

64 1. Complete docket entries from the District Court's Docket under the following dates: December 17, 1953; December 28, 1953; February 23, 1954; April 16, 1954; May 14, 1954; September 14, 1954; September 20, 1954; September 24, 1954; October 4, 1954; November 1, 1954 and February 28, 1955.

2. Motion to strike filed January 27, 1954.

3. Motion to Dismiss Indictment and all counts hereof, filed January 27, 1954.

4. Motion of defendant, Jack Green, for directed verdict at close of Government's evidence, filed September 20, 1954.

5. Motion of defendant, Labor Union, Local 397, for directed verdict at close of Government's evidence, filed September 20, 1954.

6. Motion of defendant, Jack Green, for directed verdict at close of all the evidence, filed September 24, 1954.

7. Motion of defendant, Labor Union Local 397, for directed verdict at close of all the evidence, filed September 24, 1954.

8. Motion of U. S. Attorney to proceed on Counts 1, 2, 4, 9, made September 24, 1954.

9. Motion of defendant, Labor Union Local 397, for Judgment of Acquittal or in the alternative, for new trial, filed October 4, 1954.

10. Motion of Defendant, Green, for Judgment of Acquittal or in the alternative, for new trial, filed October 4, 1954.

11. Motion of defendant, Labor Union Local 397, in arrest of judgment, filed October 4, 1954.

12. Motion of defendant, Green, in arrest of judgment, filed October 4, 1954.

13. Motion of defendants for extension of time to file defendant-appellees' Praecipe for Supplemental Record filed February 28, 1955.

14. Proof of Service of said Motion of Extension of time.

65 15. Order dated February 28, 1955 extending time to file defendant-appellees' Praecipe for Supplemental Record to and including March 22, 1955.

16. Complete transcript of the evidence in the case.

III. The following questions are presented by this Cross-Designation and the Appeal in this case:

(1) Whether the designation by the District Court of the Order as being in arrest of judgment is technically accurate or is in fact the entry of a judgment *non obstante veredicto* as shown by the Court's Memorandum of Opinion.

(2) Whether a proper construction of 18 U. S. C., Section 1951, in this case can be made without reference to the evidence.

(3) Whether the allegations of Counts I and II of the Indictment are sufficient, in the light of the evidence, to constitute a violation of 18 U. S. C. Section 1951.

Dated: March 15, 1955.

A. M. FitzGerald,
Schaefer O'Neill,
Attorneys for Defendant-Appellees,
908 Ridgely Building,
504 East Monroe Street,
Springfield, Illinois.

66 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—5236) * *

PROOF OF SERVICE.

(Filed Mar. 15, 1955. G. W. Schwaner, Clerk.)

I, A. M. FitzGerald, one of the attorneys of record for the defendant-appellees in the above entitled cause, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 15th day of March, 1955, I served copies of the attached Cross-designation and Praecipe for Additional Record on the United States, as follows:

(1) By mailing a copy thereof to Simon E. Sobeloff, Esq., Solicitor General of the United States, Department of Justice, Washington, 25, D. C., by depositing the same in an envelope duly addressed, in the United States Post Office, at Springfield, Illinois, with air mail postage prepaid.

(2) By mailing a copy thereof to John B. Stoddart, Esq., United States Attorney, for the Southern District of Illinois, Southern Division, by depositing the same in an envelope duly addressed, in the United States Post Office, at Springfield, Illinois, with first class postage prepaid.

A. M. FitzGerald,
Attorney for Defendant-Appellees.

67 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—5236) * *

AMENDMENT TO CROSS-DESIGNATION AND PRAECIPE FOR ADDITIONAL RECORD ON APPEAL.

(Filed Mar. 17, 1955. G. W. Schwaner, Clerk.)

The Cross-Designation and Praecipe for Additional Record on Appeal is hereby amended as follows:

1. By changing the period to a comma at the end of paragraph 16 of Part II thereof and by adding these words: "including all exhibits, intending hereby that the complete record of all evidence and proceedings on the trial of the cause shall be included."

2. By adding to said Part II the following:

"17. The Cross-Designation and Praecipe for Additional Record on Appeal as filed March 15, 1955.

"18. This Amendment to said Cross-Designation and Praecipe for Additional Record."

Dated March 17, 1955.

A. M. FitzGerald,
Schaefer O'Neill,
Attorneys for Defendant-Appellees.

68 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—5236) * *

PROOF OF SERVICE.

(Filed Mar. 17, 1955. G. W. Schwaner, Clerk.)

I, A. M. FitzGerald, one of the attorneys of record for the defendant-appellees in the above entitled cause, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 17th day of March, 1955, I served copies of the attached Amendment to Cross-Designation and Praecipe for Additional Record on the United States, as follows:

(1) By mailing a copy thereof to Simon E. Sobeloff, Esq., Solicitor General of the United States, Department of Justice, Washington, 25, D. C., by depositing the same in an envelope duly addressed, in the United States Post Office, at Springfield, Illinois, with air mail postage prepaid.

(2) By mailing a copy thereof to John B. Stoddart, Esq., United States Attorney, for the Southern District of Illinois, Southern Division, by depositing the same in an envelope duly addressed, in the United States Post Office, at Springfield, Illinois, with first class postage prepaid.

A. M. FitzGerald,
Attorney for Defendant-Appellees.

69 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—5236) * *

APPELLANT'S MOTION FOR EXTENSION OF TIME TO DOCKET APPEAL AND FILE THE RECORD THEREOF WITH THE CLERK OF THE SUPREME COURT.

(Filed Apr. 19, 1955. G. W. Schwaner, Clerk.)

To: Honorable J. LeRoy Adair,
United States District Judge,
Southern District of Illinois.

United States of America, Plaintiff-Appellant in the above entitled cause, moves the Court to grant to it an extension of time from April 22, 1955 to April 29, 1955, in which to docket this case and file the record thereof with the Clerk of the Supreme Court of the United States, and in support of this motion, there is attached hereto the affidavit of Marks Alexander, Assistant United States Attorney for the Southern District of Illinois.

United States of America,
Plaintiff-Appellant,
By John B. Stoddart, Jr.,
United States Attorney.

70 **Affidavit.**

City of Springfield,
County of Sangamon,
State of Illinois. } ss.

Marks Alexander, being first duly sworn, doth depose and say that he is an Assistant United States Attorney in and for said Southern District of Illinois, and as such duly authorized in this behalf; that he has been assigned the duty in the office of the United States Attorney for said District of supervising the preparation of the record on appeal in the above entitled cause, and the docketing of said appeal in the Supreme Court of the United States;

Deponent further states that the time for the docketing of said appeal and the filing of said record in the office of the Clerk of the Supreme Court of the United States at Washington, D. C. expires on April 22nd next; that the preparation of said record will not be completed by the Clerk of said District Court before the hour of 12:00 o'clock noon on April 19, 1955, and that he has been unable to obtain any assurance from either the Post Office Department or the Railway Express Company that delivery of said record in the office of the Clerk of said Supreme Court at Washington, D. C. will be made on or before April 22nd next if delivered for transmission after the hour of 12:00 o'clock noon on April 19, 1955, and that the foregoing motion for an extension of time for the docketing of said appeal and the filing of said record has been made solely for the purpose of assuring the docketing of said cause and the filing of said record on appeal will be accomplished within the time fixed by Rule 12 of the Rules of the Supreme Court of the United States, and that this motion is not being made to hinder or delay the disposition of this cause.

Marks Alexander.

Subscribed and sworn to before me this 19th day of April, A. D. 1955.

G. W. Schwaner,
Clerk, United States District Court.

(Seal)

71 Copy of the foregoing motion and of the affidavit referred to therein received this 19th day of April, 1955, and Defendants-Appellees consent to the allowance of said motion without formal hearing thereon and without further notice to Defendants-Appellees.

Jack Green and General Laborers' Local No. 397 of Granite City, Illinois, a Labor Union and Voluntary Association of Workingmen Affiliated with International Hod Carriers Building and Common Laborers Union of America,
Defendants-Appellees,

By A. M. FitzGerald and Schaefer O'Neill,
Attorneys for Defendants-Appellees,

By A. M. FitzGerald,
Attorney of record for Defendants-Appellees.

72 IN THE UNITED STATES DISTRICT COURT.

• • (Caption—5236) • •

ORDER.

(Filed Apr. 19, 1955. G. W. Schwaner, Clerk.)

The motion of the United States of America, Plaintiff-Appellant in the above entitled cause, for an extension of time to docket appeal and file the record thereof with the Clerk of the Supreme Court having been presented to the Court, and it appearing that the Defendants-Appellees by their counsel of record have consented to the granting of the same, now, therefore, for good cause shown,

It Is Ordered By The Court that said motion be and the same is hereby allowed, and Plaintiff-Appellant is hereby granted an extension of time from April 22, 1955 to April 29, 1955, within which to docket said case and file the record thereof with the Clerk of the Supreme Court of the United States.

J. Leroy Adair,
United States District Judge.

73 IN THE UNITED STATES DISTRICT COURT.

• • (Caption—5236) • •

SUPPLEMENTAL DESIGNATION AND PRAECIPE FOR ADDITIONAL RECORD ON APPEAL.

(Filed Apr. 19, 1955. G. W. Schwaner, Clerk.)

Comes now the United States of America, Plaintiff-Appellant in the above entitled cause, by John B. Stoddart, Jr., United States Attorney in and for said Southern District of Illinois, its attorney, and requests the Clerk of said District Court, pursuant to the provisions of the rules of the United States Supreme Court, to include in the transcript of the record on appeal herein, in addition to those portions of said record heretofore designated by the Appellant herein, and heretofore designated by the Defendants-Appellees herein, the following, to wit:

1. Motion of Plaintiff-Appellant for an extension of time for the docketing of this case and filing of the record thereof with the Clerk of the Supreme Court of the United States; the affidavit in support thereof attached thereto, and the receipt by counsel of record for Defendants-Appellees of copy of said motion and affidavit, with the consent of said counsel to the allowance of said motion, all filed herein on April 19th, 1955;

2. The order of this court allowing said motion for an extension of time entered in said cause on April 19, 1955 and filed herein on the same date;

74 3. This supplemental designation filed herein on April 19, 1955, together with receipt thereon of counsel of record for said Defendants-Appellees of a copy of said supplemental designation.

United States of America,
Plaintiff-Appellant,
By John B. Stoddart, Jr.,
United States Attorney as aforesaid.

Received this 19th day of April, 1955, a copy of the foregoing supplemental designation of record on appeal.

Jack Green and General Laborers' Local No. 397 of Granite City, Illinois, a Labor Union and Voluntary Association of Workingmen Affiliated with International Hod Carriers Building and Common Laborers Union of America,

Defendants-Appellees,

By A. M. FitzGerald and Schaefer O'Neill,

Attorneys for Defendants-Appellees,

By A. M. FitzGerald,

Attorney of record for Defendants-Appellees.

75 SUPREME COURT OF THE UNITED STATES.

No. 54—October Term, 1955.

UNITED STATES OF AMERICA,

Appellant,

vs.

JACK GREEN AND GENERAL LABORERS' LOCAL 397 OF GRANITE CITY, ILLINOIS, ETC.

(Filed Apr. 30, 1956. G. W. Schwaner, Clerk.)

Appeal from the United States District Court for the Southern District of Illinois.

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Illinois and was argued by counsel.

On Consideration Whereof, It is ordered and adjudged by this Court that the order in arrest of judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and the same is hereby, remanded to the United States District Court for the Southern District of Illinois for proceedings in conformity with the opinion of this Court.

March 26, 1956.

Dissenting opinion by Mr. Justice Douglas in which The Chief Justice and Mr. Justice Black concur.

A true copy.

Test:

Harold B. Willey,
Clerk of the Supreme Court of the United States,
By Hugh W. Barr,
Deputy.

(Seal)

April 27, 1956.

76 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—5236) * *

ORDER.

(Filed Jul. 20, 1956. G. W. Schwaner, Clerk.)

Time for defendants to file Briefs is hereby extended from July 23, 1956 to August 6, 1956.

Casper Platt,
Judge.

Approved:
Marks Alexander,
Asst. U. S. Atty.

77 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—5236) * *

OPINION.

(Filed Aug. 24, 1956. G. W. Schwaner, Clerk.)

The defendants, Jack Green and General Laborers' Local 397 of Granite City, Illinois, a Labor Union, etc., were indicted on nine counts. The first eight counts charged a violation of 18 U. S. C. A. 1951, and the ninth count charged a conspiracy. 18 U. S. C. A. 3731. The defendants were tried by a jury on three substantive counts and the conspiracy count. The Honorable J. Leroy Adair was the presiding trial judge. The jury found the defendants guilty on two counts, which charged in substance that the defendants attempted to extort from an employer engaged in repair work on an interstate waterway, his money, in the form of wages to be paid for imposed, unwanted, superfluous, and fictitious services. There was no charge that

defendants were seeking personal gain but only to extort wages for "featherbedding".

78 The defendants filed a motion for acquittal before the verdict. The decision on it was reserved by Judge Adair. Rule 29(b) Fed. Rules Crim. Proc. After the verdict the defendants filed a motion for new trial. Judge Adair heard arguments and denied these motions, but allowed a motion for each defendant in arrest of judgment by written order. The order was based upon lack of jurisdiction of the offense on two grounds,

(1) The indictment did not charge facts to set forth a violation of Section 1951, and

(2) If the act covered the activity alleged it was unconstitutional.

This portion of the order is set forth verbatim by the Supreme Court in *United States* v. *Green*, 350 U. S. 451. The government, appealed directly to the Supreme Court by virtue of 18 U. S. C. 3731.

The Supreme Court issued a mandate which in part stated:

> "[T]hat this cause be, and the same is hereby, remanded to the United States District Court for the Southern District of Illinois for proceedings in conformity with the opinion of this court."

At this stage of the proceedings this court was assigned to the case due to the death of Judge Adair.

The defendants insist that Rule 25 of Fed. Rules Crim. Proc. is applicable and that this court is duty bound to review the evidence and when the verdict is manifestly against the weight of the evidence grant a new trial. Rule 25 provides:

79 "If by reason of absence from the district, death, sickness or other disability the judge before whom the defendant has been tried is unable to perform the duties to be performed by the court after a verdict or finding of guilt, any other judge regularly sitting

in or assigned to the court may perform those duties; but if such other judge is satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial."

The rule requires this court "to perform the duties to be performed by the court after a verdict." In the instant case the trial judge denied both a motion for new trial and for acquittal. After a reversal of the order allowing a motion in arrest of judgment the only duty to be performed is to pronounce sentence. If this court were to again consider these motions it would be acting as a court of review. Denial of a motion for new trial is within the discretion of the court. It is not reviewable where no error in ruling on evidence or in the charge to the jury is assigned, *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 247.

Counsel for defendants have quoted from the opinion of the Supreme Court in an attempt to establish that Judge Adair did not actually rule on the motions for new trial or for acquittal, but merely denied these motions "logically" to allow the motion in arrest of judgment. Of course, the Supreme Court could only pass upon the sufficiency of the indictment under 18 U. S. C. 3731. Judge Adair entered an order, after hearing argument, unequivocally denying motion for new trial and motion for
80 acquittal, and the Supreme Court recognized this in its opinion. At page 417 the Supreme Court said:

"Appellees each filed motions for acquittal or in the alternative for a new trial. These the trial court specifically denied. The opinion of the trial court, 135 F. Supp. 162, says nothing as to failure of evidence to support the allegations of the indictment, or as to trial errors. Instead the court relied upon the absence of criminality in the acts charged, and it was therefore logical for the trial court to deny acquittal

and new trial. The court thought persuasive our recent cases which held union efforts to secure 'made work' for their members were not unfair labor practices. From its view that extortion as defined in the Hobbs Act covers only the taking of property from another for the extortioner's personal advantage, the necessity to arrest the judgment followed. Rule 34, Fed. Rules Crim. Proc.

"We do not agree with that interpretation of the section. The Hobbs Act was passed after this Court had construed section 2 of the Federal Anti-Racketeering Act of 1934, 48 Stat. 979, in *United States* v. *Local 807*, 315 U. S. 521 • • •."

In view of the necessity of this court to review the record to determine the sentence to be imposed this court has examined the transcript of the evidence as requested by the defendants to determine if a new trial should be granted. At the outset it must be observed that the defendants claim no error by the trial court on rulings on evidence or in the charge to the jury. The brief and argument presented by the defendants maintain that the verdict was against the manifest weight of the evidence on two essential issues of the indictment:

81 1. "[O]f attempts to obtain from the particular employer 'his money, in the form of wages to be paid for imposed, unwanted, superfluous and fictitious services of laborers commonly known as swampers in connection with the operation of machinery and equipment • • • for maintenance work on said levee • • •."

2. Use of "force and violence or even threats of force and violence."

A new trial should not be granted if there is substantial evidence to support the verdict. In determining whether there was substantial evidence the trial court must consider the evidence most favorable to the government together with all reasonable inferences which can be deduced therefrom. *United States* v. *Haynes*, 81 F. Supp. 63. It is not the duty of the trial judge to grant a new trial "unless

he is convinced that no reasonable man can think the evidence sufficient beyond a reasonable doubt * * *." *Bain* v. *United States*, 262 Fed. 664, 666 cert. denied 252 U. S. 586. Also see *United States* v. *Dauber*, 17 Fed. 793. Weight should be given to the decision of the presiding judge in denying the motion for new trial since he saw the witnesses and heard them testify. See *Patton* v. *Baltimore & Ohio R. Co.*, 120 F. Supp. 659, affirmed 214 F. 2d 129.

The issues were controverted but the transcript of evidence discloses that the government established the charge in the indictment. The defendants did attempt by extortion to obtain from Mr. Terry the employment of superfluous labor on his machine. When Mr. Terry wanted to proceed with his contract in March, 1953 and asked "What are you going to do then?" Mr. Green replied according to his own testimony "Never you mind, I will stop you." This in itself was a threat in violation of the Anti-racketeering Act. *United States* v. *Floyd*, 7 Cir., 228 F. 2d 913. Mr. Green's threat coupled with the display of at least 150 men on the scene of the project when Mr. Terry's machine was stopped clinched the proof of the government on this issue. As defendants' counsel argues there was no actual violence, but actual violence was not a necessary element of the crime. It would only serve to prolong this memorandum to further discuss the evidence. This court has carefully reviewed the transcript and is convinced not only that there was substantial evidence to uphold the verdict, but also that the defendants were given a fair and impartial trial. It would not be in the interest of justice to grant a new trial.

Whether this court is compelled to review the evidence or not, the motion for new trial must be denied.

Dated this 24th day of August, 1956.

Casper Platt,
United States District Judge.

83 UNITED STATES DISTRICT COURT.

• • (Caption—5236) • •

JUDGMENT AND COMMITMENT.

(Filed Aug. 24, 1956. G. W. Schwaner, Clerk.)

On this 24th day of August, 1956 came the attorney for the government and the defendant appeared in person and by counsel.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty, and a verdict of guilty of the offense of violation of Sec. 1951, Title 18 USC—Interference with Commerce by Threats and Violence—as charged in counts 1 and 2 of Indictment in 9 counts and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and not sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant pay a fine to the United States in the sum of three thousand dollars ($3,000.00) in lieu of fine and costs, said defendant to stand committed to the custody of the Attorney General until said fine is fully paid or until otherwise discharged by due process of law.

It Is Adjudged that execution be stayed for thirty days.

It Is Adjudged that imposition of sentence of imprisonment be suspended and defendant placed on probation for a period of 3 years, subject to certain conditions. (See Probation Order.)

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Mar-

shal or other qualified officer and that the copy serve as the commitment of the defendant.

Casper Platt,
United States District Judge.

The Court recommends commitment to:

.....
Clerk.

84 IN THE UNITED STATES DISTRICT COURT.
• • (Caption—5236) • •

ORDER ADMITTING DEFENDANT TO PROBATION.

(Filed Aug. 24, 1956. G. W. Schwaner, Clerk.)

The motion of Defendant that he be placed on probation is allowed.

It Is Therefore the Order of the Court that Defendant be placed on probation for a period of three years, such probation to be supervised by the United States Probation Officer for this District.

This order is made subject to the provisions of "An Act to provide for the establishment of a probation system in the United States Court, except in the District of Columbia", approved March 4, 1925, as amended, and subject to the following conditions.

First: The Court reserves jurisdiction of this cause until termination of the period of probation.

Second: The probationer shall not, during the term of his probation, leave the jurisdiction of this Court without the consent of the probation officer, and shall abide by and comply with all orders of the Court and pay the fine and costs or make restitution in time and manner as provided in this case.

Third: The probationer shall report to the probation

officer, in writing, once a month or as often as directed by that officer, his post office address, his whereabouts, conduct, and employment, and such other information as may from time to time be required by the Court or the probation officer.

Fourth: The probationer shall not violate any State or Federal Laws, or any ordinance of any municipality. He shall not indulge in the use of intoxicating liquor, and shall secure profitable employment not connected with the possession, use, sale, or manufacture of intoxicating liquor, unless he is specifically authorized to engage in such employment by the United States probation officer. He shall keep away from all undesirable places; work regularly, and when out of work, at once notify the probation officer; he shall not remain away from the city or town where he resides without permission of the probation officer. He shall notify the latter at once if he wishes to change address, and he shall follow the probation officer's instructions and advice and report in person promptly as directed. He shall contribute regularly to the support of those for whose support he is legally liable.

Fifth: The United States Probation officer may arrest the probationer, if he has reasonable grounds to believe that he has violated any of the conditions of his probation, and the United States Marshal may likewise arrest said probationer without a warrant upon the request of the said United States probation officer.

Sixth: The probationer is not during the term of his probation to serve in any official position with any union, and it is the further order of the Court that the probationer is to pay a fine of $3,000 within thirty days from the date of this order.

Enter: August 24, 1956.

Casper Platt,
United States District Judge.

85 UNITED STATES DISTRICT COURT.

• • (Caption—5236) • •

JUDGMENT AND COMMITMENT.

(Filed Aug. 24, 1956. G. W. Schwaner, Clerk.)

On this 24th day of August, 1956 came the attorney for the government and the defendant appeared by counsel.

It Is Adjudged that the defendant has been convicted upon its plea of not guilty, and a verdict of guilty of the offense of violation of Sec. 1951, Title 18, USC—Interference with Commerce by Threats and Violence—as charged in counts 1 and 2 of Indictment in 9 counts and the court having asked the defendant whether it has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant pay a fine to the United States in the sum of three thousand dollars ($3,000.00) in lieu of fine and costs.

It Is Adjudged that execution be stayed for thirty days.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Casper Platt,

United States District Judge.

The Court recommends commitment to:

.....

Clerk

86 IN THE UNITED STATES DISTRICT COURT

Southern District of Illinois,

Southern Division.

United States of America,
Plaintiff,
vs.
Jack Green, et al.,
Defendants.
} Criminal No. 5236

NOTICE OF APPEAL TO UNITED STATES COURT OF APPEALS.

(Filed Aug. 28, 1956. G. W. Schwaner, Clerk.)

The name and address of this appellant is as follows:

Jack Green,
2800 State Street,
Granite City, Illinois.

The name and address of each attorney for appellant is as follows:

A. M. FitzGerald, Attorney at Law,
504 East Monroe Street,
Springfield, Illinois.

Schaefer O'Neill, Attorney at Law,
Alton Banking and Trust Company Building,
Alton, Illinois.

The offense charged is violation of Section 1951 of Title 18 of the United States Code, more particularly this defendant in an effort to secure "made" work for a member, was guilty of interference with interstate trade and commerce by threats and violence.

A concise statement of the judgment and order, with date and sentence is as follows:

87 Upon a verdict of the jury returned on September 24, 1954, finding defendant guilty under two counts of four counts submitted from a nine count indictment, the District Court on August 24, 1956, entered judgment imposing upon defendant a fine of Three Thousand Dollars ($3,000.00) to be paid within thirty days, and admitting him to probation for three years under the condition that during said period he shall not serve in any official position with any union.

Defendant is admitted to bail.

I, the above named appellant, hereby appeal to the United States Court of Appeals for the Seventh Circuit from the above entitled judgment of conviction.

Dated August 28, 1956.

Jack Green,
Appellant.

A. M. FitzGerald,
504 E. Monroe Street,
Springfield, Illinois,

Schaefer O'Neill,
Alton Banking and Trust Company Building,
Alton, Illinois,
Attorneys for Appellant.

88 IN THE UNITED STATES DISTRICT COURT.

Southern District of Illinois,

Southern Division.

United States of America, *Plaintiff*, *vs.* Jack Green, et al., *Defendants.*	Criminal No. 5236

NOTICE OF APPEAL TO UNITED STATES COURT OF APPEALS

(Filed, August 28, 1956. G. W. Schwaner, Clerk.)

The name and address of this appellant is as follows: General Laborer's Local No. 397 of Granite City, Illinois, a Labor Union and Volunteer Association of Workingmen Affiliated with International Hod Carriers Building and Common Laborers Union of America,
1906 Missouri Avenue,
Granite City, Illinois.

The name and address of each attorney for appellant is as follows:

A. M. FitzGerald, Attorney at Law,
504 East Monroe Street,
Springfield, Illinois.

Schaefer O'Neill, Attorney at Law,
Alton Banking and Trust Company Building,
Alton, Illinois.

The offense charged is violation of Section 1951 of Title 18 of the United States Code, more particularly this defendant in an effort to secure "made" work for a member,

was guilty of interference with interstate trade and commerce by threats and violence.

A concise statement of the judgment and order, with date and sentence is as follows:

89 Upon a verdict of the jury returned on September 24, 1954, finding defendant guilty under two counts of four counts submitted from a nine count indictment, the District Court on August 24, 1956, entered judgment imposing upon defendant a fine of Three Thousand Dollars ($3,000.00) to be paid within thirty days.

Defendant is admitted to bail.

The above named defendant, hereby appeals to the United States Court of Appeals for the Seventh Circuit from the above entitled judgment of conviction.

Dated August 28, 1956.

General Laborer's Local No. 397 of Granite City, Illinois, a Labor Union and Volunteer Association of Workingmen Affiliated with International Hod Carriers Building and Common Laborers Union of America,

By A. M. FitzGerald,

Attorney for Appellant.

A. M. FitzGerald,
504 East Monroe Street,
Springfield, Illinois,

Schaefer O'Neill,
Alton Banking and Trust Company Building,
Alton, Illinois,

Attorneys for Appellant.

90 IN THE UNITED STATES DISTRICT COURT.
• • (Caption—5236) • •

ORDER STAYING EXECUTION AND ORDERING PAYMENT OF FINE TO CLERK IN ESCROW PENDING APPEAL.

The defendant, Jack Green, having been sentenced on August 24, 1956, upon his conviction on September 24, 1954, to pay a fine of Three Thousand Dollars ($3,000.00) within thirty days and to be admitted to probation for three years with the condition that during said period of time he not serve in any official position with any union and said defendant having filed a notice of appeal from the judgment of conviction, it is hereby—

Ordered, that execution of the sentence and probation be and it is hereby stayed under Rule 38(a)(3) of the Federal Rules of Criminal Procedure upon the condition that defendant pay to the Clerk of this Court the sum of Three Thousand Dollars ($3,000.00), the amount of the fine, in escrow pending the determination of said appeal, and it is further—

Ordered that the Clerk deposit said amount of Three Thousand Dollars ($3,000.00) in the registry of this Court, subject to the further order of this Court.

Dated August 29th, 1956.

Casper Platt,
United States District Judge.

91 IN THE UNITED STATES DISTRICT COURT.
• • (Caption—5236) • •

ORDER STAYING EXECUTION AND ORDERING PAYMENT OF FINE TO CLERK IN ESCROW PENDING APPEAL.

(Filed August 29, 1956. G. W. Schwaner, Clerk.)

The defendant, General Laborer's Local No. 397 of Granite City, Illinois, a labor union and volunteer association of workingmen affiliated with International Hod Carriers Building and Common Laborers Union of America, having been sentenced on August 24, 1956, upon its conviction on September 24, 1954, to pay a fine of Three Thousand Dollars ($3,000.00) within thirty days, and said defendant having filed a notice of appeal from the judgment of conviction, it is hereby—

Ordered that execution of the sentence be and it is hereby stayed under Rule 38(a)(3) of the Federal Rules of Criminal Procedure upon the condition that defendant pay to the Clerk of this Court the sum of Three Thousand Dollars ($3,000.00), the amount of the fine, in escrow pending the determination of said appeal, and it is further—

Ordered, that the Clerk deposit said amount of Three Thousand Dollars ($3,000.00) in the registry of this Court, subject to the further order of this Court.

Dated August 29th, 1956.

Casper Platt,
United States District Judge.

92 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—5236) * *

ORDER FIXING BOND FOR COSTS ON APPEAL.

(Filed August 29, 1956. G. W. Schwaner, Clerk.)

The defendants above named, having been sentenced on August 24, 1956, upon their conviction on September 24, 1954, having filed a notice of appeal from the judgment of conviction and it appearing that a bond for costs in the amount of Fifteen Hundred Dollars ($1500.00) should be furnished by them, it is hereby—

Ordered that said defendants jointly and severally file with the Clerk of this Court, to be approved by said Clerk or by the Court, a bond for costs on appeal within ten days from this date, in the amount of Fifteen Hundred Dollars ($1500.00), with sureties (or one duly authorized corporate surety) conditioned to secure the payment of costs if the appeal shall be dismissed or judgment affirmed, or such costs as the Appellate Court may award if the judgment be modified.

Dated August 29, 1956.

Casper Platt,
United States District Judge.

93 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—5236) * *

BOND FOR COSTS ON APPEAL.

(Filed September 4, 1956. G. W. Schwaner, Clerk.)

We, the undersigned, jointly and severally acknowledge that we and our personal representatives are bound to pay to the Clerk of the United States District Court, Southern District of Illinois, Southern Division, the sum of Fifteen Hundred Dollars ($1500.00).

The condition of this bond is that whereas the above

named defendants have appealed to the Court of Appeals for the Seventh Circuit by notice of appeal filed August 28, 1956, from judgments of conviction of this Court entered August 24, 1956, if the defendants and each of them shall pay all costs adjudged against them or either of them, if the appeal is dismissed or the judgment affirmed or such costs as the Appellate Court may award if the judgment is modified, then this bond is to be void, but
94 if defendants, or either of them fail to perform this condition, payment of the amount of this bond shall be due forthwith.

Jack Green,
2800 State Street,
Granite City, Illinois.

General Laborer's Local No. 397 of Granite City, Illinois, a Labor Union and Voluntary Association of Workingmen Affiliated with International Hod Carriers Building and Common Laborers Union of America,
1906 Missouri Avenue,
Granite City, Illinois,
By: Emmett Courtney,
President,

Charles R. Parker,
Secretary-Treasurer.

(Seal)
Geo. McArdle,
Surety,

Irene McArdle,
2645 Delmar, Granite City,
Surety,

C. W. Simpson,
Surety,

Geraldine Simpson,
Surety,
R. R. 2, Granite City, Ill.;

Signed and acknowledged before this 31st day of August, 1956.

Phyllis Hamilton,
Notary Public.

(Seal)

95 JUSTIFICATION OF BOND.

State of Illinois,
County of Madison. } ss.

George McArdle & Irene McArdle, being duly sworn on oath, depose and say that they are one of the sureties on the accompanying bond, that they are worth the sum of Twelve Thousand ($12,000.00) Dollars, over and above all homestead exemptions, personal exemptions, or liens and claims of any other person or property; that said property consists chiefly of the following: 4-room brick (2625 Delmar, Granite City, Illinois) being a residence building.

Geo. McArdle,
Irene McArdle.

Subscribed and sworn to before me this 31st day of August, 1956.

Phyllis Hamilton,
Notary Public.

(Seal)

State of Illinois,
County of Madison. } ss.

C. W. Simpson & Geraldine, being duly sworn on oath, depose and say that they are one of the sureties on the accompanying bond; that they are worth the sum of Ten Thousand ($10,000.00) Dollars, over and above all homestead exemptions, personal exemptions, or liens and claims of any other person on property; that said property consists chiefly of the following: 5-room frame residence building and one-half acre tract of land (R. R. No. 2, Granite City, Illinois).

C. W. Simpson,
Geraldine Simpson.

Subscribed and sworn to before me this 31st day of August, 1956.

Phyllis Hamilton,
Notary Public.

(Seal)

9/4/56. This Bond approved.

A. W. Schwaner,
Clerk, N. S. Dist. Court.

96 United States of America,
Southern District of Illinois,
Southern Division. } ss:

I, G. W. Schwaner, Clerk of the United States District Court for the Southern District of Illinois, do hereby certify that the four volumes and one package (containing exhibits) herewith transmitted are the original papers had of record and on file in the cause entitled the United States of America *vs.* Jack Green and General Laborers' Local No. 397 of Granite City, Illinois, etc., Criminal No. 5236.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Springfield this 3rd day of October, A. D. 1956.

G. W. Schwaner,
Clerk.

(Seal)

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FILED
SEP 12 1957
JOHN T. PEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

JACK GREEN AND GENERAL LABORERS' LOCAL No. 397 OF GRANITE CITY, ILLINOIS, *Petitioners*,

v.

UNITED STATES OF AMERICA.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

EDWARD BENNETT WILLIAMS,
AGNES A. NEILL,
1000 Hill Building
Washington 6, D. C.

FRED P. SCHUMAN,
1308 Niedringhaus Avenue
Granite City, Illinois

SCHAEFER O'NEILL,
Alton Banking & Trust Building
Alton, Illinois

WILLIAM P. ROBERTS,
504 East Monroe Street
Springfield, Illinois
Counsel for Petitioners

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No.

JACK GREEN AND GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, ILLINOIS, *Petitioners*,

v.

UNITED STATES OF AMERICA.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit affirming their convictions for violation of the Hobbs Act, 18 U.S.C. § 1951.

OPINIONS BELOW

The opinion of the District Court granting petitioners' motion in arrest of judgment is reported at 135 F.Supp. 162. The opinion of this Court reversing the

order of the District Court is reported at 350 U.S. 415. The opinion of the District Court upon remand is reported at 143 F.Supp. 442. The opinion of the Court of Appeals affirming petitioners' convictions (App. 1a) has not yet been reported.

JURISDICTION

The judgment of the Court of Appeals was entered on July 9, 1957 (App. 10a-11a). A petition for rehearing was denied on August 13, 1957 (App. 12a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

QUESTIONS PRESENTED

1. Whether the Hobbs Act, 18 U.S.C. § 1951, prohibits attempts by organized labor to secure genuine employment for union members in an industry affecting commerce by means of actual or threatened force, violence, or fear.

2. Whether a specific intent to rob or extort is essential to conviction under the Hobbs Act, 18 U.S.C. § 1951.

STATUTES INVOLVED

18 U.S.C. § 1951 provides:

> (a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

(b) As used in this section—

(1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

(c) This section shall not be construed to repeal, modify or affect section 17 of Title 15, sections 52, 101-115, 151-166 of Title 29 or sections 151-188 of Title 45.

The Act of June 18, 1934, c. 569, § 2, 48 Stat. 979, provides:

Any person who, in connection with or in relation to any act in any way or in any degree affecting trade or commerce or any article or commodity moving or about to move in trade or commerce—

(a) Obtains or attempts to obtain, by the use of or attempt to use or threat to use force, violence, or coercion, the payment of money or other valuable considerations, or the purchase or rental of property or protective services, not including, however, the payment of wages by a bona-fide employer to a bona-fide employee; or

(b) Obtains the property of another, with his consent, induced by wrongful use of force or fear, or under color of official right; or

(c) Commits or threatens to commit an act of physical violence or physical injury to a person or property in furtherance of a plan or purpose to violate sections (a) or (b); or

(d) Conspires or acts concertedly with any other person or persons to commit any of the foregoing acts; shall, upon conviction thereof, be guilty of a felony and shall be punished by imprisonment from one to ten years or by a fine of $10,000, or both.

STATEMENT

Petitioners were indicted, tried, and convicted in the United States District Court for the Southern District of Illinois, Southern Division, under an indictment charging violations of the Hobbs Act, 18 U.S.C. § 1951. This statute interdicts actual or attempted obstruction of interstate commerce by robbery or extortion.

The first count of the indictment alleged that petitioners attempted to obstruct interstate commerce by means of extortion, in that they attempted to obtain from one Terry money "in the form of wages to be paid for imposed, unwanted, superfluous and fictitious services of laborers commonly known as swampers" by means of actual and threatened force, violence, and

fear (R. 7-8). The second count alleged a similar attempt to obtain wages from one Wright (R. 8-9). The fourth count alleged that petitioners committed and threatened physical violence to the person of one Luhning, an employee of Wright, and the ninth count alleged a conspiracy to commit the offenses alleged in the preceding counts (R. 10-11, 14-15). The other counts of the indictment were withdrawn by the government at trial (R. 924).

The evidence, viewed in the light most favorable to the government, tended to show the following facts. Petitioner Local 397 is an affiliate of the International Hod Carriers' Building and Common Laborers' Union of America (R. 111-112). It had 150 to 170 members and it also had jurisdiction over approximately 1100 members of other affiliated locals working in Madison County, Illinois (R. 812). Petitioner Green was a business agent for Local 397 (R. 810).

Arthur W. Terry of St. Louis, Missouri, and Ralph Wright of St. Clair County, Illinois, entered into contracts with the United States Army Corps of Engineers to furnish bulldozers and tractor-scraper units, together with operating personnel, for the purpose of repairing a flood control levee in Madison County, Illinois (R. 129-130, 219). This levee was adjacent to the Chain of Rocks Canal, which had been constructed to overcome certain navigational difficulties in the Mississippi River (R. 72). Both Terry and Wright undertook to perform their contracts without the services of a common laborer generally known as a "swamper."

A swamper tends heavy earth moving equipment. He guides the progress of the machine, cleans it, sup-

plies it with gasoline, oil, and water, and attaches it to other equipment when necessary. The employment of swampers was customary in Madison County (R. 172-173, 191, 494, 514, 611-612, 675-676, 709, 800). Other contractors who worked on the Chain of Rocks project employed swampers, and the government employed a swamper to work with one of Wright's machines which it rented in January and February of 1953 (R. 138-139, 680, 696). Local 397 had a contract with the Southern Illinois Builders Association which provided for the employment of swampers wherever heavy earth moving equipment was in use, but neither Terry nor Wright belonged to the Association (R. 670-676).

On March 23, 1953, petitioner Green visited Wright's work site and asked the operator where his swamper was (R. 120-121). Thereafter, on March 26, six unidentified men approached Wright's operator and requested him to park his unit, which he did (R. 12[illegible]). That evening Wright contacted petitioner Green and stated that he had never used a laborer on maintenance work for the government, that he saw no need for one, and that he would move his equipment out if he had to have one (R. 135-136). Petitioner Green said "that was the thing to do," whereupon Wright abandoned performance of his contract (R. 136).

On March 26, six men arrived at Terry's work site and asked his operators to stop work, because there was a dispute which they wanted to have settled, namely, Terry's failure to employ swampers (R. 168-169, 186-187). Thereafter Terry was directed by the government to resume performance of his contract (R. 258). He hired two armed bodyguards and requested the sheriff to be present (R. 226-227, 258-259). On the

morning of April 13, he telephoned petitioner Green and stated that he was resuming operations without a swamper (R. 231). Petitioner Green replied that he would stop Terry from operating without swampers, but he did not specify how he proposed to do so (R. 231).

Petitioner Green proceeded to Terry's work site alone but withdrew when he heard about the armed guards (R. 843). Subsequently a group of men who belonged to Local 397 or were under its jurisdiction assembled on the levee (R. 237). Most of the witnesses testified that there were several hundred men present, although Terry estimated fifteen hundred "just to pick a figure out of the air" (R. 236). Petitioner Green meanwhile returned to the scene (R. 237). Some of the men gathered around the only machine in operation and told the operator to alight, which he did (R. 214-215). Harsh language was employed by petitioner Green and some of the men, but no actual violence occurred (R. 239-240). With the sheriff acting as an intermediary, Green and Terry agreed to withdraw and leave the controversy to "court settlement" (R. 542-544). The work was finished by another contractor who employed swampers (R. 438, 609).

The trial judge instructed the jury that they should return a verdict of guilty if they found that a swamper was "an unnecessary party" (R. 1018). He further instructed them that the government had the burden of proving beyond a reasonable doubt that petitioners attempted to force Terry and Wright to employ "unwanted, superfluous, fictitious or unnecessary laborers" (R. 1020). In response to a request by the government, he also instructed them that "you don't have

to make up your minds right when it is being done, have the intent of it, but if an act performed would result in a certain condition, then intent may be presumed" (R. 1021). The jury returned verdicts of guilty against both petitioners under counts one and two and verdicts of not guilty under counts four and nine (R. 1029).

The trial judge then denied petitioners' motions for judgments of acquittal and for a new trial but granted their motion in arrest of judgment, on the ground that the indictment failed to state an offense (R. 1045-1046). It was his view that the Hobbs Act covers only the taking of property for the extorter's personal benefit (R. 1043-1044). His opinion went on to conclude:

> "For this Court now to say that when a labor organization or officer of said organization advocated and demanded the employment of labor, which had been customary and agreed to by contractors and laborers in this Community, was a violation of this particular Act appears to me to be unreasonable.
>
> ". . . I conclude that the trouble in this Community and on this particular job was caused by a disagreement between the contractor and labor, and was in no wise an attempt to extort for the use of either the Union or the Defendant Green, any money or property of the contractor."

The government took a direct appeal to this Court under 18 U.S.C. § 3731 and secured a reversal by a divided bench. 350 U.S. 415. The majority concluded that the indictment stated an offense, rejecting the trial judge's view that the Hobbs Act is limited to cases where the defendant obtains property for his own benefit. It pointed out that the record did not

contain the evidence upon which the court acted and that it was passing only on the allegations of the indictment.

The Chief Justice, Mr. Justice Douglas, and Mr. Justice Black dissented, on the ground that the judgment of the District Court was based in part upon the insufficiency of the evidence to sustain conviction and hence that it was not subject to direct appeal. The dissenting opinion concluded that the trial judge "considered facts not alleged in the indictment, e.g., that contractors in the community had customarily agreed to the employment of labor which allegedly was demanded by appellees, and that the trouble on the particular job was caused by a disagreement between the contractor and labor, not by an attempt to extort." 350 U.S. at 421.

Since the trial judge died pending appeal, the case was assigned to another judge for sentencing. Petitioner Green was fined $3,000.00 and placed on probation for three years, during which period he may not serve in any official position with any union (R. 1069-1071). Petitioner Local 397 was fined $3,000.00 (R. 1072).

Petitioners then appealed to the United States Court of Appeals for the Seventh Circuit. Their principal argument was the insufficiency of the evidence to establish attempted extortion. The Court of Appeals rejected this argument, stating (App. 6a-7a):

> "After a careful examination of the record, we conclude that there is ample evidence of conduct which could reasonably be found to constitute threats of force and violence in an attempt to instill fear into the employers in order to coerce them into hiring the unwanted labor. . . .

". . . The record discloses overt conduct which reasonably constituted threat of physical violence, which admittedly was designed to force the contractors to hire unnecessary laborers."

REASONS FOR GRANTING THE WRIT

1. This case presents an important question left unanswered by the prior decision of this Court herein, namely, whether the Hobbs Act interdicts attempts to achieve the status of a bona fide employee by means of actual or threatened force, violence, or fear. The affirmative answer of the court below to this question is completely at war with the legislative history of the Hobbs Act. It poses a serious threat, moreover, to the legitimate activities of organized labor. Its obvious significance in the administration of the Hobbs Act compels review by this Court.

A. The question presented by this case had its origin in the case of *United States* v. *Local 807*, 315 U.S. 521. There members of the International Brotherhood of Teamsters stopped trucks coming into New York City and used violence and threats to compel the owners to pay $9.42 for each large truck and $8.41 for each small truck entering the city. These amounts represented the union wage scale for a day's work of driving and unloading. In some cases the union members drove the truck into the city and unloaded it in return for the payment. In others cases they performed no services whatsoever in return for the money, either because they refused to do so or because the truck owners refused to accept their services.

Prosecution was instituted under the predecessor to the Hobbs Act, which contained an exception for "the payment of wages by a bona-fide employer to a bona-fide employee." Act of June 18, 1934, c. 569, §§ 1-6,

48 Stat. 979. The government conceded that this statute did not cover persons who performed services in return for the money paid. It conceded that persons "who use coercion to secure genuine employment are engaged in a legitimate labor objective; their activities, although perhaps constituting breaches of the peace, do not partake of the nature of extortion." 315 U.S. at 522. Both the Court of Appeals and this Court agreed that the defendants could not be guilty if they honestly sought to obtain an opportunity to work for a wage. The "difficult issue" which divided both courts was whether they were guilty if they intended to compel payments regardless of whether their services were accepted or rejected by the employers. 315 U.S. at 534.

In an opinion by Mr. Justice Byrnes, this Court held that the statutory exemption of "wages" covered cases of this character. Chief Justice Stone, dissenting, argued that money paid for services which were rejected could not be characterized as "wages," and hence that an attempt to secure payment for rejected services by means of violence was a crime. He agreed with the majority and with the government, however, that the statute did not punish an attempt to secure genuine employment by coercive means. His opinion states, 315 U.S. at 541:

> "*Even though the procuring of jobs by violence is not within the Act,* and though this includes the 'stand-by' job where no actual service is rendered, the granted immunity, unless its words be disregarded, does not extend to the case where the immediate objective is to force the payment of money regardless of the victim's willingness to accept and treat the extortioner as an employee." (Emphasis added.)

The majority opinion in this case raised a storm of controversy, and numerous bills were introduced to amend the statute. S. 2347, 77th Cong., 2d sess.; H.R. 6872, 77th Cong., 2d sess.; H.R. 7067, 77th Cong., 2d sess.; H.R. 653, 78th Cong., 1st sess.; H.R. 32, 79th Cong., 1st sess. H.R. 32 was enacted into law in 1946 and is generally known as the Hobbs Act. The committee report on this bill in the House reprinted the *Local 807* decision in full and made it clear that the purpose of the bill was to adopt the views of the Chief Justice. H.Rept. 238, 79th Cong., 1st sess. While a few individual members of the House indicated a desire to use this bill as a "right to work" law, the debate as a whole makes it clear that Congress was seeking only to adopt the position advocated by the government and the Chief Justice. 91 Cong. Rec. 11899-11922. The Solicitor General so conceded at page 18 of his brief on the merits when the case at bar was here on direct appeal. There is no reason to suppose that Congress intended to go further than the government of the Chief Justice and condemn attempts to secure genuine employment by coercive means.

The court below, however, has done precisely what Congress refrained from doing. The indictment in this case charged that petitioners sought to compel the payment of wages for "imposed, unwanted, superfluous and fictitious services" by means of actual and threatened force, violence, and fear. This Court has held that these allegations make out an offense under the statute. It relied upon the enactment of H.R. 32 as demonstrating a legislative intent to outlaw coerced payment of wages for services which were never to be performed, *i.e.*, services which were imposed, unwanted, superfluous, *and fictitious*. It pointed out that

it could not determine the sufficiency of the evidence to sustain these allegations upon direct appeal. 350 U.S. at 421.

Concededly the evidence does not support the allegation that the services in question were fictitious. Concededly petitioners sought only to compel the contractors to employ union members in accordance with the prevailing custom in the area. Other contractors in the area employed swampers to perform certain tasks, and petitioners clearly contemplated that any swampers employed as a result of their demands would perform such tasks in return for the customary wage.

Both the trial judge and the Court of Appeals recognized that this case did not involve fictitious services. The trial judge told the jury that the issue was whether the swampers were "unnecessary," and that they could convict if they found that the swampers were "unwanted, superfluous, fictitious *or* unnecessary" (R. 1018, 1020). In his opinion, he recognized that the services of a swamper were customary in the area (R. 1044). The Court of Appeals affirmed because it found that swampers were "unwanted" and "unnecessary" (App. 6a-7a). It did not and could not find that petitioners sought to compel the payment of wages for fictitious services, because the evidence was all the other way.

Of course, a finding that swampers were "unnecessary" is not tantamount to a finding that the services of swampers are "fictitious." Petitioners have never suggested that swampers are necessary. The services customarily performed by swampers can be and in this case were performed by the operators of the machines. Since these operators earn a much higher

hourly wage than common laborers, however, petitioners contend that it is more efficient and economical to employ swampers. Contractors such as Wright and Terry, on the other hand, who are renting their machines and operators on an hourly basis, may find it more lucrative to have the operators perform the services in question.

The court below has thus held that it is a felony to attempt to secure genuine employment by coercive means. This Court has held that the predecessor of the Hobbs Act did not cover such cases. The legislative history of the Hobbs Act makes it clear that Congress did not intend to alter pre-existing law in this respect. Petitioners have consequently been convicted of an offense created by the Court of Appeals, and not by Congress.

B. The decision of the court below poses a serious threat to the rights of organized labor. A concededly legitimate objective of all unions is to secure employment for union members. No one condones the use of physical violence to attain this objective. The history of the trade union movement, however, demonstrates that labor disputes are often attended by some threats or actual violence. Certainly a simple breach of the peace should not become one of the most serious felonies in the federal criminal code merely because the perpetrator is a union member engaged in a labor dispute which involves the employment of union members to perform certain services. Any such construction of the Hobbs Act would be particularly unjust in view of the fact that a similar assault or threat by an agent of the employer constitutes a simple misdemeanor punishable under state law.

Subsection (c) of the Hobbs Act strongly suggests that Congress did not intend any such result. This section provides that the statute shall not be construed to repeal, modify, or affect the Norris-LaGuardia Act or the National Labor Relations Act. It is only reasonable to suppose, therefore, that conduct which is permitted and protected under these acts does not violate the Hobbs Act merely because it is coupled with a breach of the peace.

An even more serious objection to the decision of the court below stems from the fact that the Hobbs Act has been construed to condemn attempts to obtain property by fear of economic loss. The courts of appeals have held that an attempt to obtain money for the personal aggrandizement of union officers by threats of labor difficulties is a crime under this statute. See *United States* v. *Postma*, 242 F.2d 488; *United States* v. *Masiello*, 235 F.2d 279, cert. denied *sub nomine Stickel* v. *United States*, 352 U.S. 882; *United States* v. *Varlack*, 225 F.2d 665; *Callanan* v. *United States*, 223 F. 2d 171, cert. denied, 350 U.S. 862; *Bianchi* v. *United States*, 219 F.2d 182, cert. denied, 349 U.S. 915; *Hulahan* v. *United States*, 214 F.2d 441, cert. denied, 348 U.S. 856.

Here again, no responsible union official condones such conduct. When the holding of these decisions is combined with the holding of the court below in this case, however, the result is a mortal blow to organized labor. In this case, the Seventh Circuit has held that an attempt to secure genuine employment for union members by means of "actual or threatened force, violence, or fear" is a crime. In the cases cited above, other circuits have held that fear of economic loss is "fear" within the meaning of the Hobbs Act. When

these two legal propositions are combined, it becomes a crime to attempt to secure genuine employment for union members by means of economic coercion, *i.e.*, strikes or threats of strikes. Thus one of the oldest and most legitimate weapons of organized labor becomes a crime if used for one of the oldest and most legitimate objectives of organized labor.

It may be suggested that the statute punishes only the "unlawful" use of force, violence, or fear, and hence that it does not cover strikes for legitimate objectives. The court below, however, has held at least by implication that an attempt to compel an employer to hire an unwanted laborer is not a legitimate objective. Moreover, any strike which would constitute an unfair labor practice or a breach of a collective bargaining agreement is "unlawful," at least in a certain sense. Should threats of such an "unlawful" strike become a felony merely because one of its objectives is to secure employment for union members? These serious questions urgently require consideration by this Court.

C. The only prior case remotely in point is *United States* v. *Kemble*, 198 F.2d 889, cert. denied, 344 U.S. 893. This was a four to three decision of the Third Circuit affirming a conviction under the Hobbs Act. Defendant in this case employed actual and threatened violence to compel a non-union truck driver to pay $10.00, described as a day's wages, for a union member to unload his truck after the bulk of the unloading had already been accomplished by the driver himself. The *Kemble* case is plainly distinguishable from the case at bar in that Kemble was demanding a day's wage *after* the day's work had been substantially accomplished by the non-union driver. In other words, Kemble was

demanding money for largely fictitious services. Here, on the other hand, the record is clear that petitioners sought only to compel the employment of swampers who would do a customary day's work for a customary day's wage. So far as the record shows, the amount of the wage was never discussed, and petitioners never demanded the payment of any fixed sum.

Furthermore, the petition for certiorari in the *Kemble* case did not adequately present the arguments relied upon by petitioners herein. It did not, for example, discuss whether the Hobbs Act was intended to prohibit attempts to secure genuine employment by means of economic coercion, perhaps because it antedated the decisions holding that fear of economic loss is sufficient under this statute. These petitioners consequently urge that the denial of certiorari in *Kemble* should not in any way influence the disposition of their petition.

II. Concededly the Hobbs Act condemns only interference with commerce by means of robbery or extortion. The offense charged in this case, therefore, is not interference with commerce by means of actual or threatened force, violence, or fear, but rather interference with commerce by means of extortion.

Concededly also extortion, like all larcenous offenses, is a crime of specific intent. The existence of such intent is plainly a question for the jury. The trial court in this case, however, told the jury that specific intent was unnecessary. The Court of Appeals compounded this error by holding that a "general intent" is sufficient under the Hobbs Act (App. 7a).

At the conclusion of the court's charge to the jury, the following supplementary instruction was given (R. 1021):

"The Court: It has been suggested to me that perhaps I did not make myself clear on the question of intent.

"Any person may be supposed to intend—intend the reasonable and probable consequences of an act performed. That is, you don't have to make up your minds right when it is being done, have the intent of it, but if an act performed would result in a certain condition, then intent may be presumed."

Of course, this instruction was egregiously erroneous under the decision of this Court in *Morissette* v. *United States*, 342 U.S. 246. There the defendant was convicted of stealing government bomb casings. His defense was that he thought they had been abandoned by the government. The trial court told the jury, however, that the question was whether he intended to take the property, and that intent would be presumed from the act of taking.

This Court unanimously reversed, on the ground that the existence of a specific criminal intent is a jury question in larcenous offenses and that the existence of such intent cannot be presumed from the mere act of taking. Mr. Justice Jackson, speaking for the Court, stated, 342 U.S. at 274:

"Where intent of the accused is an ingredient of the crime charged, its existence is a question of fact which must be submitted to the jury. State court authorities cited to the effect that intent is relevant in larcenous crimes are equally emphatic and uniform that it is a jury issue.

. . . . .

"It follows that the trial court may not withdraw or prejudge the issue by instruction that

the law raises a presumption of intent from an act."

The trial judge in this case did precisely what this Court forbade in the *Morissette* case. In both cases, the trial judge told the jury that a specific criminal intent was unnecessary. In both cases, the judge went on to tell the jury that intent would be presumed from the defendant's act. In both cases, therefore, the judge withdrew from the jury's consideration an essential element of the offense, namely, *mens rea*.

Such prejudgment was particularly prejudicial here, because the weight of the evidence was to the effect that the employment of swampers was customary and that their services were considered valuable. Under proper instructions, therefore, the jury might well have concluded that petitioners did not intend to compel the payment of wages for "imposed, unwanted, superfluous and fictitious services." While no objection was taken at trial to this instruction, it obviously constitutes plain error which this Court can and should notice *sua sponte*. Rule 52, Federal Rules of Criminal Procedure.

Moreover, petitioners urged in the Court of Appeals that there was no evidence of a specific intent to extort, and the Court of Appeals held that a "general intent" was sufficient under *Morissette*. This distortion of the *Morissette* holding served only to compound the error in the trial court's charge. It underscores the necessity for a determination by this Court on the question of *mens rea* in Hobbs Act cases.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be granted.

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Counsel for Petitioners.

September, 1957.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

SEPTEMBER TERM 1956, APRIL SESSION 1957

No. 11887

UNITED STATES OF AMERICA, *Plaintiff-Appellee*,

v.

JACK GREEN, *Defendant-Appellant*.

No. 11888

UNITED STATES OF AMERICA, *Plaintiff-Appellee*,

v.

GENERAL LABORERS' LOCAL 397 OF GRANITE CITY, ILLINOIS, *Defendant-Appellant*.

Appeal from the United States District Court for the Southern District of Illinois, Southern Division

July 9, 1957

Before DUFFY, *Chief Judge*, FINNEGAN and LINDLEY, *Circuit Judges*.

LINDLEY, *Circuit Judge*. Defendants, General Laborers' Local Union 397 (hereinafter referred to as the "Local Union") and Jack Green, were convicted on two counts of an indictment charging violations of the Anti-Racketeering Act sometimes referred to as the Hobbs Act. 18 U.S.C. § 1951. The provisions of the statute are, *inter alia*:

> "(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not

more than $10,000 or imprisoned not more than twenty years, or both.

"(b) • • •

(2) The term 'extortion' means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term 'commerce' means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction. • • •"

The counts charged that, on two separate occasions, each of defendants unlawfully and willfully obstructed, delayed and attempted to obstruct, delay and affect commerce by means of extortion, in that they attempted to obtain from two employers money in the form of wages to be paid for imposed, unwanted, superfluous and fictitious services of laborers commonly known as "swampers" and to accomplish their objectives by wrongful use of actual and threatened force, violence and fear. Subsequent to conviction, the trial court arrested the judgment because it was of the opinion that the indictment did not state an offense under the Act. On appeal by the government to the Supreme Court, pursuant to the provisions of 18 U.S.C. § 3731, the Court, considering only the question of sufficiency of the indictment, reversed, *United States* v. *Green*, 350 U.S. 415, holding that the extortion provision of the Act plainly prohibits conduct wherein a union and its representatives, through the use of threats of force, violence and fear, attempt to obtain money from an employer in the form of wages for fictitious, unwanted services, even though the

money is not sought for the immediate benefit of the parties indicted.

On this appeal, defendants contend, primarily, that the evidence is insufficient to sustain the verdict. Specifically it is argued that the evidence does not support the conclusion that there were threats of violence or that defendants intended to commit the crime charged. In addition, it is urged that the record does not disclose that "commerce" was affected, and, finally, that reversible error was committed by the court in failing to give certain instructions.

In determining whether there was a sufficient evidentiary foundation to support the verdict, it is elementary that we must view the record in the light most favorable to the government and grant the latter the benefit of all inferences which reasonably may be drawn therefrom. *Glasser* v. *United States*, 315 U.S. 60, 80; *Hulahan* v. *United States*, 214 F. 2d 441, 442 (CA-8). And, it is not our function to weigh the evidence or to inquire into the credibility of the witnesses.

The pertinent facts follow. Defendant Local Union, with headquarters in Granite City, Illinois, is an affiliate of the International Hod Carriers' Building and Common Laborers' Union of America, whose constitution, as well as that of the Local Union, provides that members of other local unions within the jurisdictional limits of defendant Local Union are required to cooperate with its policies. As a result the Local Union had jurisdiction and control, not only over its own members, but also over members of other locals throughout Madison County, Illinois; consequently, in addition to its own 150 to 170 members, it represented approximately 1100 members of other locals. Defendant Green, at the time of the occurrences in evidence, was the business representative of the Local Union.

Each of two contractors, Arthur W. Terry, Jr. of St. Louis, Missouri, and Ralph W. Wright, Jr. of St. Clair

County, Illinois, had contracted with the United States Army Corps of Engineers to furnish bulldozers and tractor-scraper units, with operators, for the purpose of repairing a flood control levee located adjacent to the Chain of Rocks Canal, which had been built in order to overcome certain navigational difficulties in the Mississippi River.

Wright began performance of his contract in October, 1952 and, with normal interruptions due to adverse weather conditions, continued until March 26, 1953. Terry began his work March 1, 1953, and, with minimum interruptions, proceeded practically continuously until March 26th. On March 23rd, Green visited Wright's work site and inquired of the operator of one of the machines, "where his laborer was." Green was informed that no "swamper" had been employed. The purpose of the inquiry was to determine whether "swampers", whose primary duty is said to be to scout ahead of the bulldozers and warn of approaching pitfalls were employed. Thereafter, on March 26th, five unidentified men approached the same operator and ordered him to park his unit; as a result, work ceased. That evening Wright proceeded to the office of the Local Union in an effort to determine the nature and extent of the controversy. He conversed with Green and, at the trial, testified as follows:

> "A.: Well, I asked him what the trouble was; and he said we needed a man out there with that 'cat' and scoop. And I told him that we done a lot of maintenance work for the Government and we never did have one before, and I didn't see no need for him being out there, and if I had to have one out there, I would move the 'cat' and scraper out.
>
> "Q.: What did he say?
>
> "A.: Well, he said that is the thing to do.
>
> "Q.: Did you move your equipment out?
>
> "A.: Yes, sir."

On March 26, 1953, the same day the Wright incident occurred, Terry had a bulldozer and a tractor-scoop unit

in operation on the levee. He, too, hired no common laborer. Apparently, at approximately the time of the appearance of the men at the Wright working-place, 6 men arrived at the Terry location and asked the operators to stop working, as there was a dispute which they would like to have settled, namely, the failure to employ "swampers." The workers acceded to the demands, and work was not resumed by Terry until April 13, 1953.

A short time prior to April 13th, Terry, having been directed by the engineering corps to resume performance of his contract, decided to comply. In order to protect himself and his men from further disturbance, two bodyguards were hired. The day before work was resumed Terry informed the sheriff of the sensitive situation. On the morning of April 13th, Terry and the bodyguards, proceeded to the levee, where operations were resumed in the presence of a deputy sheriff. Terry telephoned Green that he was resuming work without a common laborer. Terry's testimony regarding the conversation was as follows:

> "The Witness: I identified myself. He said, 'This is Jack Green speaking.' I identified myself, and I said, 'Jack, we are going to start this job out here this morning and we can't—I can't afford to put a laborer on each one of these tractors.' He says, 'Well, you put a laborer on them if you are going to start them.'
>
> "By Mr. Alexander: Q. What was that?
>
> "A.: He said, 'You will put a laborer on each one of these tractors if you are going to start it—if you are going to run it.' I said, 'Well, what are you going to do, are you going to put a picket line up?'
>
> "He said: 'No.'
>
> "I says, 'Well, what are you going to do then?'
>
> "He says, 'Never you mind.' He says, 'I will stop you.'
>
> "I says, 'How are you going to do it?'
>
> "He says, 'You'll see.' • • •"

In the vicinity of Granite City are many industrial plants which employ members of the Union and others within its jurisdiction. On the morning in question, work at various plants was proceeding as usual, when, without notice to their employers, the union members left their places of employment "as one", and converged at the union hall, where they held a meeting. After the session, this crowd of men, with Green leading the way, moved en masse to the place on the levee where Terry was operating. Estimates of the number of the men in the crowd ranged from 700 to 1500. Upon approaching the job site, a large group circled the only machine in operation and the operator was told to alight. It appears from the record that much harsh language was used by members of the crowd and by Green himself, including such statements as "We ought to bash his head in", "We ought to throw his car in the canal." There was testimony that some of the men kicked the car, and that Green employed profanity, saying: "get back over to the other side of the river and don't come back, you are a scabby laborer, you are gat-slingers", and "Now you get * * * back over to the West Side, and we don't want to ever see you over here again. What's more I'm running you out of business. You are out of business as of right now. I don't care whether you are on the East Side or on the West Side."

In considering the question of the sufficiency of the evidence, it is to be borne in mind that this is a so-called "attempt" case, in view of the fact that no money was ever received. In other words, the contractors never hired the unwanted, unneeded "swampers". After a careful examination of the record, we conclude that there is ample evidence of conduct which could reasonably be found to constitute threats of force and violence in an attempt to instill fear into the employers in order to coerce them into hiring the unwanted labor. It may be true, as defendants insist, that there was no actual physical violence. However, mere threats of bodily harm may suffice. Considering the entire background and circumstances out of which the disputes

arose, we think the jury was justified in finding that the language of Green to Wright constituted threats of violence. Similarly, the language of Green to Terry, as well as the appearance and presence of an admittedly hostile crowd, was sufficient to constitute a threat of force and violence instilling fear in the mind of any reasonable man.

It is urged that there is no proof of an intent to extort. Clearly, the proof of a general intent to commit the crime charged is a necessary element. *Morissette* v. *United States*, 342 U.S. 246; *United States* v. *Sutter*, 160 F. 2d 754 (CA-7). For the general rule, see 22 Am. Jur. 237, §13. However, it is axiomatic that a person is held to intend the natural consequences of his acts. The record discloses overt conduct which reasonably constituted threat of physical violence, which admittedly was designed to force the contractors to hire unnecessary laborers. Defendants must be held to have intended the consequences which would reasonably flow from such conduct.

Defendants argue that the court erred in failing to give the following instruction: "A labor dispute exists where a difference has arisen between an employer and a labor organization, or between an employer and employees or other persons, regarding wages, hours, conditions of employment, the manner of performance of work, or the method whereby work is to be performed, regardless of whether the disputants stand in the proximate relation of employer and employee. The court instructs the jury that, if the jury finds that a labor dispute existed between Laborers Local Union No. 397, and Operating Engineers Local Union No. 520 on March 26, 1953 and April 13, 1953, and a jurisdictional dispute is a labor dispute, the jury shall find the Defendants not guilty." Throughout the proceedings, defendants have attempted to brush aside their conduct as constituting merely a jurisdictional labor dispute, beyond the scope of the Anti-Racketeering Act. Such a theory is patently ill-founded. This is clear from the Supreme Court's decision in *United States* v. *Green*, 350

U.S. 415, 420: "There is nothing in those Acts (referring to the Clayton Act, the Norris-LaGuardia Act, the Railway Labor Act, and the National Labor Relations Act) however, that indicates any protection for unions or their officials in attempts to get personal property through threats of force or violence. Those are not legitimate means for improving labor relations." There is no doubt that unions have the right to settle disputes peaceably by means of negotiation, and it is equally clear that this act does not curtail any legitimate labor activity. In stressing this fact, the court, in *Callanan* v. *United States*, 223 F. 2d 171, 175 (CA-8), approved the following instruction: "The Anti-Racketeering statute under which the charges are based has no reference or bearing on action by a labor organization leader, honestly acting and representing members of his organization. • • • The act clearly is protective to labor organizations, and labor members, and their membership, as it is to employers." We agree with the decisions that this statute encompasses illegal conduct which may be an outgrowth of a labor dispute just as any other criminal conduct may result from activity originally lawful. The mere fact that conduct originates in exercise of a lawful function does not prevent the ramifications and extensions thereof from becoming unlawful. The court was entirely correct in abstaining from instructing the jury as requested by defendants.

Finally, it is contended that there is no evidence of any interference with "commerce". In considering this issue, we are mindful of the language of the court in *Hulahan* v. *United States*, 214 F. 2d 441, 445 (CA-8) where it was succinctly stated: "It seems apparent from the language of the statute that it was the intent of Congress to protect interstate commerce against extortion or attempted extortion which in any way or in any degree reasonably could be regarded as affecting such commerce."

At the close of the evidence the trial court gave the following instruction to the jury: "[The charge] is a violation

by force or threatened force, intimidation of workers or persons concerned in the construction of what is alleged to have been an interstate commerce highway. That is the charge and that is the matter which you must decide here. Now so far as this being an interstate commerce tramway or highway or whatever we may desire to call it, if you believe the testimony of the Government witnesses, it is unquestionably an interstate commerce highway. • • •'' It was clearly the function of the court to determine whether interstate commerce was affected and whether the court had jurisdiction under the Act. As stated in *Hulahan* v. *United States, supra,* at page 446: ''We think it was for the court, and not the jury, to determine whether the Government's evidence, if believed, would bring the activities of the defendant within the statute and sustain federal jurisdiction.'' See also *Nick* v. *U.S.*, 122 F. 2d 660, 673 (CA-8).

From the government's proof on this issue, it is obvious that this jurisdictional requirement was properly satisfied. As previously noted, in order to circumvent certain hazards of navigation on the Mississippi River, a most important factor in interstate commerce, a canal some 9 miles in length had been constructed and adjacent thereto the protective levees. Traffic moving down the river was required to enter the canal and travel its length in order to avoid treacherous rock formations in the river. We conclude that the conduct of defendants in interfering with and delaying the maintenance of such protective levees was sufficient to constitute an obstruction of interstate commerce within the meaning of the Act.

The judgment is affirmed.

A true Copy:

Teste:

.....

Clerk of the United States Court of Appeals for the Seventh Circuit.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago 10, Illinois

Tuesday, July 9, 1957.

Before

Hon. F. Ryan Duffy, Chief Judge
Hon. Philip J. Finnegan, Circuit Judge
Hon. Walter C. Lindley, Circuit Judge

No. 11887

UNITED STATES OF AMERICA, *Plaintiff-Appellee*

vs.

JACK GREEN, *Defendant-Appellant*

Appeal from the United States District Court for the Southern District of Illinois, Southern Division

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Illinois, Southern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Chicago 10, Illinois

Tuesday, July 9, 1957.

Before

Hon. F. Ryan Duffy, Chief Judge
Hon. Philip J. Finnegan, Circuit Judge
Hon. Walter C. Lindley, Circuit Judge

No. 11888

UNITED STATES OF AMERICA, *Plaintiff-Appellee*

vs.

GENERAL LABORERS' LOCAL 397 OF GRANITE CITY, ILLINOIS.

Appeal from the United States District Court for the Southern District of Illinois, Southern Division

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Illinois, Southern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago 10, Illinois

Tuesday, August 13, 1957

Before

Hon. F. Ryan Duffy, Chief Judge
Hon. Philip J. Finnegan, Circuit Judge
Hon. Walter C. Lindley, Circuit Judge

No. 11887

UNITED STATES OF AMERICA, *Plaintiff-Appellee*

vs.

JACK GREEN, *Defendant-Appellant*

No. 11888

UNITED STATES OF AMERICA, *Plaintiff-Appellee*

vs.

GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, ILLINOIS, *Defendant-Appellant*

Appeals from the United States District Court for the Southern District of Illinois, Southern Division

On consideration of the motion of counsel for Appellants, It is ordered that leave be granted to file Appellants Supplement to Petition for Rehearing instanter.

It is further ordered by the Court that the Petition for Rehearing of these appeals be, and the same is hereby DENIED.

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No. 454

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

JACK GREEN AND GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, ILLINOIS, *Petitioners*,

v.

UNITED STATES OF AMERICA.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

REPLY BRIEF FOR PETITIONERS

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 454

JACK GREEN AND GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, ILLINOIS, *Petitioners*,

v.

UNITED STATES OF AMERICA.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

---

REPLY BRIEF FOR PETITIONERS

The petition for certiorari in this case presents two questions: first, whether the Hobbs Act, 18 U.S.C. § 1951, covers attempts to secure genuine employment; second, whether this statute requires a specific intent to rob or extort. The government has seriously distorted the first of these questions. Petitioners' reply brief is limited to the clarification of this issue.

Whether the Hobbs Act interdicts attempts to achieve the status of a bona fide employee through coercive methods is an unsettled and crucial question. The government, however, has distorted this legal issue into a factual issue. Its brief states that the first question presented by the petition is whether the courts below "properly found the evidence sufficient to support the verdict" (Br. Opp. 2). The Solicitor General goes on to say that petitioners "argue that the evidence is insufficient because it does not show that the services of swampers could not have been performed" (Br. Opp. 13). It is obviously for this reason that the government's brief devotes nine and a half pages to a statement of the facts and only one and a half pages to argument on the first question presented by the petition.

These petitioners, however, are conversant with the considerations which govern the grant of certiorari. They do not suggest that this Court should grant certiorari to review the sufficiency of the evidence. The Solicitor General has completely misconceived the thrust of petitioners' position. They ask only that this Court determine the applicability of the Hobbs Act to the facts established by the evidence.

Concededly the evidence shows that the employment of swampers was customary in cases of this character. Concededly also the evidence shows that other contractors working on the very project in question had employed swampers. The evidence does not support the government's assertion that there was no genuine work for swampers on this particular job. In any event, however, that issue was not submitted to the jury. The jury was instructed to convict if the

services of swampers were unwanted, superfluous, fictitious, *or* unnecessary. The Court of Appeals affirmed because it found that swampers were unwanted and unnecessary. Of course, this amounted to a directed verdict of guilty, because petitioners admitted that the complaining contractors did not *want* to employ swampers, and petitioners further admitted that swampers were not *necessary* because the operators could perform the same services.

What petitioners did contend was that they were attempting to secure genuine employment for union members, *i.e.*, an opportunity to work for a wage. That issue was never submitted to the jury, obviously because both of the courts below recognized that this case did not involve fictitious services. Neither the jury nor the Court of Appeals found that petitioners sought to compel the payment of wages for services which were not to be performed. Neither the jury nor the Court of Appeals found that there was no genuine work for swampers on this particular job. It is thus too late for the Solicitor General to suggest that the evidence would have supported such a finding.

The important issue raised by this case cannot be avoided by suggesting that "unnecessary" and "fictitious" are synonymous. In some cases, it might be true that the terms are interchangeable, and a finding that services are "unnecessary" might be sufficient for conviction. This is never true, however, in cases such as the case at bar, which involve jurisdictional disputes. In these cases, the members of neither union are "necessary," because the work can be performed by members of the other union. The

true test in such cases is whether the members of one union are seeking wages in return for "fictitious" services, *i.e.*, services which are never performed at all.

The record reveals that this test was not applied by either of the courts below. Both the jury and the Court of Appeals found only that the complaining contractors wanted to operate and could operate without the services of swampers. They did not go on to find that the swampers, if employed, would not have done a customary day's work for a customary day's wage.

Finally, the Solicitor General suggests that petitioners are attempting to reargue the prior decision of this Court herein. *United States* v. *Green*, 350 U.S. 415. To support this suggestion, the government's brief quotes a single sentence from the prior opinion. When read in context, however, this isolated sentence was clearly never intended to resolve the issue raised by this case. This Court was concerned only with the sufficiency of the indictment, which was framed in the language of the statute. The trial judge arrested judgment because the indictment made it plain that petitioners were not seeking to obtain property for their own benefit. This Court reversed, on the ground that the statute did not require personal profit to the defendant. No other issues were raised or considered.

Even the government does not deny that the question upon which petitioners seek review is a question of grave importance. Its significance is foreshadowed by the three dissenting opinions in *United States* v. *Kemble*, 198 F.2d 889, cert. denied, 344 U.S. 893. Despite the fact that the *Kemble* petition did

not adequately present the issue raised by this case, moreover, Mr. Justice Douglas dissented from the denial of certiorari. As pointed out at p. 17 of the petition herein, this issue is far more important today than when *Kemble* was decided, because the courts have since held that economic coercion is sufficient to constitute "force, violence, or fear" under the Hobbs Act. The significance of these decisions is discussed at pp. 15-16 of the petition. Their effect was predicted by Judge Staley, dissenting, in the *Kemble* case, 198 F.2d 889-890:

> "Any strike to obtain higher wages constitutes a use of force to obtain the property of another. Suppose an additional object of such a strike is to force the employer to bargain with a union when another labor organization has already been certified as the representative of the employees, thus rendering the strike an unfair labor practice . . . . Or suppose the strike is in violation of a collective bargaining agreement. These are both examples of strikes which are unlawful, at least in a certain sense. Both might reasonably be termed attempts to obtain the property of another by the wrongful use of force. If such strikes should affect interstate commerce, we would have complete offenses under the Hobbs Act.
>
> "I do not think that Congress intended such far-reaching effects under the Hobbs Act."

The government's brief is completely silent concerning these decisions. It merely suggests that the record does not present any legal issue and that the legal issue sought to be raised was settled by this Court's prior decision herein. Since both of these contentions are contrary to fact, the Solicitor General has not advanced any valid reason why this Court

should not resolve the applicability of the Hobbs Act to attempts to secure genuine employment by physical or economic coercion.

For the foregoing reasons, petitioners urge that the petition for a writ of certiorari should be granted.

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Counsel for Petitioners.

October, 1957.

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In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 454

JACK GREEN AND GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, ILLINOIS, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals (Pet. App. 1–9) is reported at 246 F. 2d 155. The memorandum opinion of District Judge Platt denying the motion for new trial (R. 1064–1068) is reported at 143 F. Supp. 442. The memorandum opinion of Judge Adair (R. 1041–1044) granting a motion in arrest of judgment is reported at 135 F. Supp. 162. The opinion of this Court reversing that order and remanding the cause for further proceedings is reported at 350 U. S. 415.

JURISDICTION

The judgments of the Court of Appeals were entered on July 9, 1957 (Pet. App. 10–11), and a petition for rehearing was denied on August 13, 1957 (Pet. App. 12). The petition for a writ of certiorari was filed on September 12. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether the two courts below properly found the evidence sufficient to support the verdict.

2. Whether the court's unchallenged charge to the jury relative to proof of intent under the Hobbs Act (18 U. S. C. 1951) was erroneous.

STATUTE INVOLVED

18 U. S. C. 1951 provides:

> (a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.
>
> (b) As used in this section—
>
> (1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the

person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

(c) This section shall not be construed to repeal, modify or affect section 17 of Title 15, sections 52, 101–115, 151–166 of Title 29 or sections 151–188 of Title 45.

STATEMENT

On September 24, 1954, petitioners were convicted (R. 1028–1029) under the first and second counts of a nine-count indictment (R. 7–15) charging that they had obstructed interstate commerce and attempted to do so by extortion, in violation of 18 U. S. C. 1951.[1] The property alleged to have been demanded of two contractors through the unlawful use of force and fear was money in the form of wages to be paid for im-

[1] Counts 3, 5, 6, 7, and 8 were dismissed on the election of the Government after trial (R. 924–925, 1015). Petitioners were acquitted by the jury on counts 4 and 9 (R. 1028–1029).

posed, unwanted, superfluous and fictitious services of laborers, commonly known as swampers, in connection with a contract for the maintenance of a levee bordering the Chain of Rocks Canal, a channel for traffic on the Mississippi River and its tributaries. Following the verdict, District Judge Adair denied the petitioners' motions for acquittal and for a new trial, but granted their motions in arrest of judgment on the ground that 18 U. S. C. 1951 did not apply to the facts alleged in the indictment (R. 1041–1046). On appeal by the Government, this Court reversed the order of the district court and remanded the cause for proceedings in conformity with its opinion, holding that the allegations of the indictment stated an offense under 18 U. S. C. 1951. *United States v. Green,* 350 U. S. 415.

On remand, the case was assigned to District Judge Platt under Rule 25, F. R. Crim. P., since Judge Adair had died while the case was being appealed. Acting under the power given him by Rule 25, F. R. Crim. P., Judge Platt reviewed the evidence and, in an opinion dated August 24, 1956, found it legally sufficient to establish the charges contained in the first and second counts of the indictment (R. 1064–1068; 143 F. Supp. 442). On August 24, 1956, Judge Platt entered judgments against both petitioners, sentencing petitioner Green to the payment of a $3,000 fine and a suspended sentence of three years' imprisonment (R. 1069–1070), and petitioner Union to a fine of $3,000 (R. 1072). On appeal to the Court of Appeals for the Seventh Circuit, the judg-

ment as to each petitioner was affirmed (Pet. App. 1–11).

The evidence in support of the judgments appealed from may be summarized as follows:

On February 9, 1953, the Chain of Rocks Canal, located north of East St. Louis, Illinois, was opened for commerce by the United States Army Corps of Engineers. This eight-mile canal was built to bypass rock ledges in the Missouri River which were a hazard to navigation, and was designed to accommodate about a million tons of shipping per month (R. 71–79, 92–93). An essential part of the project were levees along the canal which controlled erosion and prevented blockage in the nine-foot channel. The St. Louis District of the Corps of Engineers was responsible for the maintenance of these levees, particularly the filling-in of shallow gullies on the levee slopes before serious erosion could occur. This operation required the use of bulldozers and tractors with scoops to move dredged sand and silt from the base of the levee to the erosion gullies on the slopes (R. 73, 80–81, 86–87, 121, 167, 181, 210, 406, 436). The Corps of Engineers entered into various "equipment rental" contracts under which the Government hired both equipment and men to do the work under the direction of the Engineers. The contracts were usually given to small contractors who had only a few pieces of equipment (R. 85–87, 108, 130, 406).

The two contractors involved in this case, Arthur W. Terry and Ralph W. Wright, Jr. (operating as the Midway Excavating Company), entered into such contracts with the Corps of Engineers (R. 81–82, 129, 219,

249, 404). Wright began performance of his contract in October 1952 and, with normal interruptions due to adverse weather, continued until March 26, 1953. Terry began his work March 1, 1953, and proceeded almost continuously until March 26, 1953 (R. 130, 137, 249, 255, 405).

Both Wright and the operators of the equipment of the two contractors belonged to or worked under a permit from Local 520 of the Operating Engineers Union in East St. Louis, Illinois (R. 120, 123–124, 129, 166, 178–179, 207). Laborers working in that area (as distinguished from operating engineers) worked under the jurisdiction of petitioner, Local 397 of Granite City, Illinois, a union affiliated with the International Hod Carriers Building and Common Laborers' Union of America, which, although having a membership of only 150 to 170 members, had jurisdiction also of approximately 1,100 members of other locals employed in the area who paid dues and were required to cooperate with the petitioner Union (R. 866–868). Petitioner Green was the business representative of the petitioner Union (R. 810–811). One type of general laborer under the jurisdiction of the petitioner Union was the "swamper", who would go ahead of a bulldozer or tractor in order to spot obstacles such as timber and deep holes in its path (R. 148–150, 200). No "swampers" were employed by the two contractors in connection with this operation (R. 495) since no "swamping" work was needed (R. 136, 145, 276, 408–409, 922). Since the equipment was being used in sand and silt, there was no need for a laborer to clean the tracks (R. 256, 278,

437, 452, 917–920), or perform other tasks in connection with the operation and maintenance of such equipment (R. 148–149).

On March 23, 1953, petitioner Green visited the site where Wright's employee, Luhning, was operating a tractor-scoop unit, and asked him where his "swamper" was. When Luhning told petitioner that he had none, petitioner said to have his boss meet petitioner on the levee, the next day at noon (R. 120–122, 125). The next day, Wright appeared on the job but Green did not (R. 122, 132–133, 143–144). At about 10 o'clock a. m., on March 26, however, as Luhning was operating his tractor-scoop unit, six men approached him. When, in answer to their questions, he told them he did not have a laborer, they told him to park his "cat" (caterpillar tractor) until he had a laborer (R. 122–123). After being informed of this development, Wright visited petitioner's office in Granite City, Illinois, and asked him what the trouble was. Petitioner replied that they (R. 135) "needed a man out there with that 'cat' and scoop." Wright told petitioner that there was no need for a laborer on the job, and if he had to have one he would move his tractor out. When petitioner told him, "That is the thing to do," Wright moved out his equipment and ceased work on the contract (R. 136).

On March 26, 1953, the same day the Wright incident occurred, Terry had a bulldozer and a tractor-scoop unit in operation filling in "wash-outs" on the levee. Apparently at approximately the time of the appearance of the men at the Wright work site, six

men arrived at the Terry location. After ascertaining that neither of the two operators was using "swampers", they told Terry's foreman, Clifton, that they wanted to put a "swamper" on the tractors. When Clifton told them he did not have authority to hire (R. 205), "they said they would shut the job down." They told the operators to discontinue their work. Both operators acceded to this demand, and work was not resumed by Terry until April 13, 1953 (R. 168–171, 175, 186, 409–411). One of the operators, William Feche, stated as his reason for stopping work that day (R. 187):

> If it was one individual, I wouldn't have stopped. I would have questioned it a little bit. But there was—oh, five or six fellows that was up on the berm or up on the top of the levee, and he asked me to stop, and I just let it go through my mind what could have happened, and I stopped.

A short time prior to April 13, 1953, Terry received a communication from the Corps of Engineers that, unless he proceeded with the work, his contract would be subject to cancellation (R. 223–224, 225, 257). Terry reported the events of March 26 to the Federal Bureau of Investigation (R. 225, 258), and, on April 12, 1953, hired two police officers from St. Louis County, Missouri, to act as his personal bodyguard and protect his men from further disturbance. Then he and the two bodyguards, Zinn and Florence, went to the sheriff's office in Edwardsville, Illinois, reported the situation, and asked for protection (R. 226–227, 232, 257, 259, 287–288, 308, 521–522). During the after-

noon and evening of that day, Terry attempted to reach petitioner Green by telephone but was unsuccessful (R. 227–228).

On the morning of April 13, 1953, Terry proceeded to the work site with his bodyguard and a new operator, Voyles, who held a permit from Local 520 of the Operating Engineers (R. 207–211, 229, 420). Terry called petitioner Green from a restaurant near the work site. When he told Green he could not afford a laborer on each tractor, Green replied, "Well, you put a laborer on them if you are going to start them" (R. 231). When asked what he was going to do, Green said, "I will stop you," and when asked how, he answered, "You'll see." When told there was no need for a swamper on each machine, Green said, "Well, let them carry water for the operator when he gets thirsty." Green insisted he would not permit one laborer for the whole job and that there had to be a laborer for each tractor (R. 231).

Terry then told the new operator to start work with his tractor-scoop unit (R. 231–232), and Karl Lehmann, the government inspector for the Corps of Engineers who was in charge of the operation, showed the new operator what to do (R. 277, 421). Terry, who remained on the scene in a car with his two bodyguards, was joined by a deputy sheriff from Edwardsville, Illinois, about 8:15 or 8:30 a. m. (R. 234). While the men were waiting, petitioner Green drove up in a Cadillac, spoke briefly with the deputy sheriff and then left (R. 234, 236–237, 295). The deputy, thinking the situation more than he could handle, called the sheriff's office, and the sheriff

and three additional deputies arrived on the site about 9:30 a. m. (R. 235, 525–528) in order to prevent violence (R. 563).

Meanwhile, a message was circulated at various industrial plants in the area by Skeen (a shop steward and the vice-president of petitioner Union (R. 445)) and others, advising that all laborers under the jurisdiction of petitioner Union were to walk off their job and assemble at the union hall (R. 321–322, 326–327, 330–331, 339–340, 344, 354, 360).[2] The large group of men (including about 395 men from the Granite City Steel Company and about 145 men from the Austin Construction Company working at the Dow Chemical Plant (R. 158, 163–164, 165)) assembled at the union hall where they were met by Green (R. 322–323, 339–340, 355, 361). There, a convoy of automobiles was formed and the assemblage of laborers drove to the site of the Terry levee project (R. 323).

The group, estimated by Terry as 1,500 men (R. 236), by government inspector Lehmann as 700 (R. 425), and as a smaller group by others (R. 212–214, 296), left their cars near the site, assembled for about 45 minutes (R. 236, 423), and then proceeded as a body up the levee toward Terry's parked car and a parked truck of government inspector Lehmann. Below them, Terry's tractor-scoop unit was being operated by Voyles. On reaching Voyles' ma-

[2] When asked why the men had left (R. 159, 164), Green in response to one inquiry said (R. 159):

"I have them down here for a little meeting, and we have a job to do, just knock them off the payroll and they will be back. It won't take long. * * * It has nothing to do with your job."

chine, one of the men suggested (R. 424): "Let's circle that tractor", and part of the group crowded around Voyles' machine so that it could not move. One of the men said to Voyles (R. 215), "Put up your hand, that is it", and Voyles shut off his motor. Voyles asked the men if he could take the tractor up on the levee and they said "No" (R. 215). The men surrounded, in similar fashion, a government truck driven by the lead foreman of the Corps of Engineers who was attempting to drive down the ramp of the levee, but on an order of one of their number to (R. 400) "Let that truck go," the truck was allowed to proceed.

As the men approached Terry's car, government inspector Lehmann heard the men yell (R. 425), "Jack wants this car circled." They told Terry, who was standing nearby, that "they had orders from Green" not to let him get into his car (R. 237). The crowd of men thereupon surrounded him and Zinn, one of his bodyguards, so closely that they could not move unless they forcibly tried to push them out of the way which, according to Terry, they were afraid to do. Petitioner Green had, in the meanwhile, gone over to the sheriff's car to talk with him and his deputies. The sheriff then approached Terry and said (R. 238), "Terry, you better get out of here before you get killed," whereupon one of the men in the crowd said, "He's not going anywhere until Green says he can." One of the deputies told the crowd encircling Terry's car to "Let this car go," but the men paid no attention (R. 425).

Petitioner then came over to where Terry was surrounded by the men and said (R. 239–240):

> * * * I'm running you out of business. You are out of business as of right now. I don't care whether you are on the East Side or on the West Side.

Government inspector Lehmann heard petitioner Green tell Terry (R. 426) "that he could bring all the guns and all of the goons he wanted over there and he would give him all of the competition he wanted," and also "to get across the river and stay there." When Green told the men to let them go, Terry and Zinn attempted to get to their car. One of the men, however, struck at Terry, and then two or three others approached as though to strike him while others cursed and shoved him (R. 240, 315, 427). When Terry and Zinn reached and entered the car, one of the men said (R. 241), "You had better get on out of here while you can." The men then began to kick and hit his car, and another man suggested that they throw it in the canal (R. 241, 317, 429, 552). Terry was, however, able to drive off. Terry's other bodyguard, Florence, whom he had to leave behind in the crowd, was able to get away in the car of a deputy sheriff (R. 241–242, 266–267, 561).

Both Terry and Wright were unable to resume their work under the contracts. The Gorham Company took over the entire maintenance project on April 23, 1953, and completed it on May 21, 1953 (R. 448). Petitioner Green admitted that there had been "a scuffle" at the job site (R. 859). He contended, however, that the walk-out of the laborers was com-

pletely spontaneous, that the activities at the job site were not under union auspices, and were not union picketing or a union-sponsored activity (R. 848–852, 882).

ARGUMENT

1. Petitioners admit the use of threats. They admit, also, that the services of swampers were "unnecessary" (Pet. 13). They attempt, however, to draw a distinction between "unnecessary" and "fictitious," and argue that the evidence is insufficient because it does not show that the services of swampers could not have been performed.

First, the argument has no basis in fact in this case. The evidence (*supra*, pp. 6–7) shows that there was no genuine work for swampers on this particular job. The judge in his charge to the jury, after explaining the various counts (R. 1015–1017), told the jury they must determine (R. 1018) "whether or not this man, the swamper, or the man that was requested that they employ, was an unnecessary party, was only an attempt on the part of some person or persons defendant in this suit to obtain money from the contractor for services that were not warranted." The jury thus had to find that the "services" sought to be forced on the contractors by threats of violence were not only unwanted, but were also unnecessary or fictitious in the sense of having no value or utility to the contractors. There is no real distinction between "unnecessary" and "fictitious" in this context.

Actually, what petitioners are seeking to do is to reargue the prior decision of this Court in this case, 350 U. S. 415. Referring to the earlier case of

United States v. *Local 807*, 315 U. S. 521, which had held that the *predecessor* section did not apply to force and violence used to compel employment of "superfluous services" (see 350 U. S. at p. 419), this Court stated on the prior appeal (p. 420):

> The city truckers in the Local 807 case *similarly* were trying by force to get *jobs* and pay from the out-of-state truckers by threats and violence. *The Hobbs Act was meant to stop just such conduct.* [Emphasis added.]

The conduct here proved was clearly within the scope of the Hobbs Act as definitively interpreted by this Court.[3]

2. After defining the elements of the offense charged, the trial judge charged, as quoted above, that it was necessary for the jury to determine whether the swamper was an "unnecessary party" attempting to get money for unwarranted services. He then said (R. 1018):

> It is necessary in a case of this sort that the Government show by evidence that this action was knowingly done, in violation of the law, and was wilfully done, intentionally done.
>
> Now you may consider from the inference of testimony whether or not you believe those facts to be true. It isn't necessary at all times to prove by direct proof of a certain act or a certain thing, but from the inference, the general inference from the whole, if you believe

[3] The Government's brief on the prior appeal (No. 54, Oct. Term, 1955) assumed throughout that the indictment presented, and the Hobbs Act covered, wages paid, under the threat of force, to supernumeraries or unnecessary workers. See *e. g.*, Brief for the United States, pp. 15–16, 17–18, 32–33.

> that this was an act that was wilfully and knowingly committed with the intention to affect commerce in that particular district, that may be considered by you without direct testimony in regard to it.

Subsequently, he told the jury that the Government must prove beyond a reasonable doubt that petitioners, by threats of violence, were "attempting or endeavoring to force A. W. Terry, Jr. or Ralph Wright, Jr. to employ and impose unwanted, superfluous, fictitious, or unnecessary laborers to work in the performance of his contract" (R. 1020–1021).

After the conclusion of his charge, the judge said (R. 1021):

> It has been suggested to me that perhaps I did not make myself clear on the question of intent.
>
> Any person may be supposed to intend—intend the reasonable and probable consequences of an act performed. That is, you don't have to make up your minds right when it is being done, have the intent of it, but if an act performed would result in a certain condition, then intent may be presumed.

Although admitting that no objection was made, petitioners contend that this charge, particularly the last portion, constitutes plain error which the court below should have noted under Rule 52, F. R. Crim. P. The contention is that it permitted the jury to find guilt on a "general intent", rather than a "specific intent" (Pet. 17–19).

The judge, however, was very specific in stating the necessity of finding the intent "to affect commerce

in that particular district" (R. 1018), and the necessity of finding that petitioners, by threats of violence, attempted to force the employment of unwanted, superfluous and unnecessary laborers (R. 1020–1021). There was no possibility, under the charge as a whole, that the jury could have found petitioners guilty on some general plan of wrongdoing. To find the elements of the offense, the jury had to find the specific intent condemned by the statute.[4]

The last portion of the charge, discussing proof of intent, is in amplification of the brief charge on circumstantial evidence (R. 1018). It was clearly correct. As this Court said in *Cramer* v. *United States*, 325 U. S. 1, 31, "What is designed in the mind of an accused never is susceptible of proof by direct testimony," and "intent must be inferred from conduct of some sort." And as the court below observed (Pet. App. 7), it is "axiomatic that a person is held to intend the natural consequences of his acts." See *Cramer* v. *United States*, 325 U. S. 1, 31; *Agnew* v. *United States*, 165 U. S. 36, 50; *McKenna* v. *United States*, 232 F. 2d 431, 437 (C. A. 8); *House* v. *United States*, 78 F. 2d 296, 301 (C. A. 6), certiorari denied, 296 U. S. 608; *Dunlap* v. *United States*, 70 F. 2d 35, 37 (C. A. 7), certiorari denied, 292 U. S. 653.

[4] In *Morissette* v. *United States*, 342 U. S. 246, relied on by petitioners, the statute contained no definition of the intent element requisite to proof of the crime, and the court instructed the jury that they could presume intent from the fact of a taking of government property, an act which, under the defense theory that the property was abandoned, might have been a purely innocent one.

CONCLUSION

The case was decided in accordance with established legal principles, and there is no conflict in decisions. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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